Sunshine Act Meetings

Federal Register
Vol. 59, No. 170
Friday, September 2, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, August 30, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the Corporation's corporate, supervisory, and liquidation activities.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as received, liquidator, or liquidating agent of those assets:

Memorandum re:

CrossLand Savings, FSB, New York City (Brooklyn), New York (Case No. 505–10242–94–BOD)

Application of First Federal Savings Bank of Fort Dodge, Fort Dodge, Iowa, a proposed new federally chartered stock savings bank, for Federal deposit insurance.

Personnel matters.

In calling the meeting, the Board determined, on motion of Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: August 30, 1994.

Federal Deposit Insurance Corporation.

Leneta G. Gregorie,

Acting Assistant Executive Secretary.

[FR Doc. 94–21871 Filed 8–31–94; 2:01 pm]

BILLING CODE 6714–0–M

Corrections

Federal Register
Vol. 59, No. 170
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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 940415-4212]

RIN 0651-AA68

Revision of Patent Fees

Correction

In rule document 94-20900 beginning on page 43736, in the issue of August 25, 1994, make the following correction:

On page 43737, in the third column, in the tenth line, "PCP" should read "PCT".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 20

[CGD 91-228]

RIN 2115-AE39

Class II Civil Penalties Under the Federal Water Pollution Control Act and the Comprehensive Environmental Response, Compensation and Liability Act

Correction

In rule document 94-7541 beginning on page 15020 in the issue of Wednesday, March 30, 1994, make the following corrections:

1. On page 15021, in the second column, in the first full paragraph, in the third line from the end of the paragraph "more" should read "move".

§ 20.202 [Corrected]

2. On page 15023, in the first column, in § 20.202(j) in the last line "Judge;" should read "Judge:"

§ 20.203 [Corrected]

3. On page 15023, in in the second column, in § 20.203(b), in the second line "disrupted" should read "disputed".

§ 20.206 [Corrected]

4. On the same page, in the same column, in the heading § 20.206 "Separtion" should read "Separation"

§ 20.311 [Corrected]

5. On page 15025, in the third column, in § 20.311(a)(2), in the fourth line "serviced" should read "served", and the paragraph designated "(E)" should read "(e)".

§ 20.805 [Corrected]

6. On page 15030, in the second column, in § 20.805(a), in the fifth line "issues" should read "issue".

§ 20.903 [Corrected]

7. On page 15031, in the first column, in the heading § 20.903 "Proceedings" should read "proceedings".

§ 20.1003 [Corrected]

8. On the same page, in the third column, in the heading § 20.1003"of" should read "for".

BILLING CODE 1505-01-D

Federal Register

Friday
September 2, 1994

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 626, et al.
Job Training Partnership Act; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 628, 629, 630, 631, and 637

Job Training Partnership Act

RIN 1205–AA95

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is amending the Job Training Partnership Act (JTPA) regulations to implement the Job Training Reform Amendments of 1992 and related statutes. Through these final regulations, the Department intends to direct the focus of JTPA training and employment programs on improving the targeting of JTPA services to those facing serious barriers to employment, enhancing the quality of services provided and program outcomes, strengthening fiscal and program accountability and the linkage between the services provided and local labor market needs, and fostering a comprehensive and coherent system of human resource services.

EFFECTIVE DATE: June 30, 1995, except that the provisions of § 627.201 shall be effective October 3, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Aaron, Office of Employment and Training Programs. Telephone: (202) 219–6825 (this is not a toll-free number). Copies of this final rule are available in the following formats: electronic file on computer disk and audio tape. They may be obtained at the above office.

SUPPLEMENTARY INFORMATION: On October 13, 1982, the President signed into law the Job Training Partnership Act, Public Law 97–300. The stated purposes of the Act were "to establish programs to prepare youth and unskilled adults for entry into the labor force, and to afford job training to those economically disadvantaged individuals and others facing serious barriers to employment who are in special need of such training to obtain productive employment."

Title I of the Act sets forth general requirements for programs, as well as some requirements for State and local operation of programs. Title II provides requirements for State and local operation of adult and youth programs for the economically disadvantaged. Title III of the Act provides for operation of State and substate programs of employment and training assistance for dislocated workers. Title IV provides requirements for special programs for targeted groups, such as Native Americans, migrant and seasonal farmworkers, and veterans, as well as for the Job Corps and other specialized programs. Title V provides incentives to States to reduce welfare dependency and increase self-sufficiency for absent parents of children receiving aid to families of dependent children and blind or disabled individuals receiving supplemental security income under title XVI of the Social Security Act.

The final rule, among other things, implements statutory requirements under the Job Training Reform Amendments of 1992 (JTPA Amendments), Public Law 102–367; the Nontraditional Employment for Women Act (NEW), Public Law 102–235; the Department of Defense Authorization Act for Fiscal Year 1993 (Defense Authorization Act), Public Law 102–484; the Older Americans Act, as amended by Public Law 103–171; the Clean Air Act, Public Law 101–549; the North American Free Trade Agreement (NAFTA) Worker Security Act, title V of Public Law 103–182 and the Goals 2000: Educate America Act, Public Law 103–227. While the programs are modified pursuant to statutory amendments and requirements, the delivery system for the JTPA programs under the final rule remains essentially the same as in pre-Amendment regulations. It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12866, 58 FR 51735, October 4, 1993.

The Department of Labor ("DOL" or "the Department") has certified to the Chief Counsel for Advocacy, Small Business Administration, that pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), the final rule would not have a significant economic impact on a substantial number of small entities. No significant economic impact would be imposed on such entities by the final rule.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act, information collection requirements which would be imposed as a result of the final rule are being submitted separately to the Office of Management and Budget.

Prior Actions

The Department has conducted this rulemaking in an open and public manner. Since the enactment of the Amendments, Department officials have responded to numerous invitations to discuss the Amendments with organizations interested in the Amendments and proposed regulatory action. Additionally, a group of technical experts has offered suggestions to the Department on the proposed areas for regulatory action.

On September 10, 1992, the Department published an Advance Notice of Proposed Rulemaking in the **Federal Register** and invited comments from interested parties regarding proposed or recommended regulatory actions to be taken by the Department. 57 FR 41447.

On December 29, 1992, the Department published an interim final rule in the **Federal Register**, providing the opportunity for comment. 57 FR 62004. Amendments to the rule were published on June 3, 1993. 58 FR 31471.

Over 400 sets of comments were received in response to the interim final rule. Sources of comments by the close of the comment period were as follows: Private industry councils (99); service delivery areas (72); service providers (41); States (39); community-based organizations (33); public interest groups (31); State JTPA offices (28); private contractors (14); State education agencies (10); Federal agencies (8); unions (7); private citizens (7); State job training coordinating councils (6); members of Congress (2); and other sources (4).

In addition, on March 24, 1992, the Department published proposed rules in the **Federal Register** for the Clean Air Employment Transition Assistance program under JTPA title III, providing the opportunity to comment. 57 FR 10232. Thirteen sets of comments were received from State, substate entities and other organizations.

The Department fully considered these comments and other comments received in time to consider in the development of this final regulation and addresses the issues they raised in the following discussion.

Finally, during the period of May through July, 1994, when this final rule was in development, the Department initiated a Dialogue with the employment and training community and others interested in the JTPA title II program for the disadvantaged. This Dialogue was initiated by a **Federal Register** notice published on May 18, 1994, and consisted principally of a series of fifteen small group and town hall meetings and a review of research on employment and training programs with a view to developing an action plan to improve title II programs.

Approach to Rulemaking

These regulations continue to provide substantial responsibility and discretion to States and local areas in developing policy and in implementing procedures for JTPA programs. Thus, in many instances in these final regulations, responsibility for certain decisions is vested in the State and in the service delivery areas (SDA's) and substate grantees (SSG's).

The Department has attempted in these final regulations to foster improved customer services by eliminating or reducing unnecessary programmatic requirements wherever possible so that decisions on how to best serve JTPA customers will be made, to the maximum extent possible, at the level of customer service and based upon customer need. For example, some of the restrictions on the duration of certain activities, such as work experience and entry employment experience where not specifically provided for in the Act, have been eliminated. Rather than Federal regulation, the needs of the customer as determined in the assessment process and the intervention's likelihood of success in enhancing skills and achieving long term employment will dictate how the program intervention will be designed.

This was also a theme from the title II Dialogue. Some of the principal themes suggested by the title II Dialogue were the following: (1) Greater program flexibility with accountability, (2) Greater support for longer-term training interventions, including approaches more customized to customer needs and better connections between training and jobs, (3) Improved coordination at all levels but with special attention to coordination among federal agencies, (4) Increased supportive services, (5) More streamlining of eligibility, and (6) Better access for community-based organizations to JTPA planning and service delivery. To the extent permitted by the rulemaking process, the Department considered the major themes from the Dialogue in this final rule. In several instances, there are changes in this final rule that are consistent with the themes of the Dialogue. For example, as noted above, certain prior restrictions have been eliminated; initial efforts to achieve greater coordination with the Departments of Education, Health and Human Services and Housing and Urban Development are reflected in this final rule; the Department has attempted to streamline the requirements for providing participants with financial assistance; and these final regulations clarify that, as appropriate, the new eligibility provisions for youth are applied in the program under section 123 and title II-B. In addition, the Department will reexamine the Eligibility Documentation Technical Assistance Guide.

Consistent with Executive Order 12866 (58 FR 51735, October 4, 1993), these regulations are limited to those areas which are specifically required by statute, identified by the Department or the public as necessary to provide guidance and clarification, or essential to further the purposes of the Act. Additionally, the Department fully intends to provide strong oversight and monitoring of JTPA programs in conjunction with strengthened State and local oversight and monitoring. It is through the monitoring of the implementation of the Amendments and these regulations, rather than through promulgation of prescriptive regulations, that the Department, working with the States and service delivery and substate areas, will ensure effective program operations.

Of all the consultations and comments the Department has received, about half expressed interest in having the Department be more detailed in the regulations, and the other half indicated that the Department was being overly prescriptive in the interim final rule and preferred that the Department provide minimal guidance. The Department reminds readers of these regulations that the JTPA Amendments create more restrictive operational and programmatic requirements in order to address a series of issues that had been identified in connection with JTPA. The Department has sought to strike a balance in these final regulations in terms of guidance and prescriptiveness. In some regulatory areas, such as some of the administrative requirements, the Department has carefully specified requirements to set a strong foundation for program integrity so that in other regulatory areas, such as program design, there can be more flexibility and emphasis on outcomes. Finally, the Department has sought to make these regulations sufficiently clear, so that all parties with an interest in JTPA understand both the requirements and the areas of flexibility in the program.

This final rule is not a stand-alone document; the companion document is the JTPA, as amended. In several instances, however, portions of the Act are repeated to make the final rule user-friendly and to facilitate its use as a reference tool.

In addition to the 1992 JTPA Amendments, the Clean Air Act, section 4467 of the Defense Authorization Act and the NAFTA Worker Security Act impacted on title III of JTPA. The final regulations in 20 CFR part 631 provide for limited revisions to existing title III regulations as required by these statutes.

There were a number of comments on specific areas of performance standards and related reporting requirements. On July 11, 1994, the Department published separately in the **Federal Register** the final performance standards for PY 1994 and PY 1995. The Department appreciates the issues raised by commenters on the interim final regulations in the area of performance standards and has taken these comments into account in developing the performance standards. In addition, on June 23, 1994 the Department issued Training and Employment Information Notice 5–93, Change 1 with the revised reporting instructions.

The Department also plans to issue separately revisions to the regulations for title IV, part A, the Employment and Training Programs for Native Americans and Migrant and Seasonal Farmworkers. When it does, the contents of the regulations as reflected herein may change. The Department has issued revised regulations for title IV, part B, the Job Corps. (58 FR 69098 (December 29, 1993)).

Format of These Final Regulations

The structure, organization, and enumeration of the JTPA regulations have been revised to accommodate the Amendments. Throughout this document, unless otherwise stated, "JTPA" or "the Act" refers to the Job Training Partnership Act, as amended (29 U.S.C. 1501, *et seq.*); "Department" or "DOL" refers to the U.S. Department of Labor; and "Secretary" refers to the Secretary of the U.S. Department of Labor or the Secretary's designated representative(s). As used in these final regulations, the term "title" refers to a title of the Job Training Partnership Act, unless the text specifically refers to another statute. The terms "section", "part", and "subpart" refer to a section, part, and subpart, respectively, of these final regulations, unless the text specifically refers to another document.

As specified at PART 626—Introduction To The Regulations Under The Job Training Partnership Act, part 627 applies to all programs under titles I, II, and III of the Act, except where noted, and part 628 generally applies to title II programs. Parts 629 and 630 are reserved for future use. Part 631 continues to apply to title III programs and part 637 has been revised for the title V Jobs for Employable Dependent Individuals (JEDI) program. Therefore, various sections that previously

appeared in parts 627, 628, 629, and 630 have been redesignated to parts 627 and 628.

Definitions

The interim final rule at § 626.5 added a significant number of definitions of terms used throughout the JTPA and regulations. Definitions of the terms "commercially available off-the-shelf training package", "family", "family income", "obligations", "stand-in costs", and "vendor" received the most comments.

Commercially available off-the-shelf training package.

At the outset, the wording of the term being defined is changed. In the interim final rule the term was "commercially available or off-the-shelf training packages;" in the final rule, the word "or" is dropped so that the term being defined reads "commercially available off-the-shelf training packages". The reason for this change is that both the Act and the definition require that a training package be both commercially available and available at off-the-shelf prices. Practically, availability at off-the-shelf prices is subsumed within the broader concept of commercial availability.

Several commenters submitted comments on the definition of "commercially available off-the-shelf training package", contained in § 626.5. The basis of this definition is the definition of a commercial product found in part 15 of the Federal Acquisition Regulation (FAR). First of all, the Department acknowledges that there is a degree of uncertainty regarding which training packages and their providers fall within the meaning of commercially available off-the-shelf. The term, as defined within § 626.5, relies generally upon whether the package is provided in a commercial market in which it is available to the public. This was the origin of the language "sold to the public" and that related to "catalogue or market prices". These business concepts are indicators of the training package's availability to the public, e.g., a catalogue available to the public or a public, advertised price shows that the entity is seeking to engage in commerce. The Department believes that most parties understand the basic meaning of whether any package is "commercially available." Some related areas of the definition are discussed further below.

A second area of inquiry pertains to the contents of the package. The training will consist of classroom and related practical instruction, which may include hands-on experience. It may consist of the development of occupational or education-related skills. For example, a package may provide occupational training to a participant as a nurse practitioner, as a maintenance mechanic, or in computer design, in heating, ventilation and air conditioning, or may provide basic skills in reading and computation. The package may consist of a necessary assessment of interests, aptitudes, and abilities, as well as counseling and guidance related to participant progress and employment prospects. Such a training package will not normally consist of the kind of assistance typically provided within the meaning of a JTPA supportive service, but may include fees, books and other materials needed for participation and completion of the package. In other words, if an organization offers training to the general public which consists solely of a practical training course in a particular occupation, it is that course, without any other placement or assessment services, which may be purchased as a commercially available training package. On the other hand, if the organization offers assessment or placement services to the public as part of its training course, those services will be a part of the commercially available package. A key indicator, however, is whether the contents of the package are generally available and generally the same for all participants, not just JTPA participants.

Finally, commenters raised questions about the type of entity that might provide the commercially available package. A variety of entities may be the source of a commercially available package; however, the characteristics of the package, that is, whether they meet the tests of commercial availability at off-the-shelf prices, are more of an indicator than the entity that provides it. Such entities may include those that provide computer-based instruction in a variety of occupational and educational topical areas, or they may be public and private schools, academies or other entities that offer training that is commercially available, as discussed above.

A few commenters requested that the phrase "performance criteria" be defined, and the definition now includes language that addresses the reference to "performance criteria". "Performance criteria" may generally fall into two or more areas that reflect the necessary components and features of the package that is to be delivered, such as (1) grade requirements, knowledge, skills, and competencies which may be expected to be attained by students, and (2) where appropriate, participant attainment as manifested by job placement. This latter component is contingent upon whether the service is regularly offered and may be reasonably included in the package.

A few commenters were concerned with the requirement that the packages be unmodified. They indicated that, in many instances, a commercially available training package may be modified to some degree to reflect the special needs of the JTPA population, without changing its basic content. A strict reading of the regulation would prohibit contracting for commercially available packages which are modified in any way, regardless of whether the package remains substantially the same. In addition, this strict reading would prohibit the JTPA program from taking advantage of a discounted price that might be offered in connection with multiple purchases of the package. The Department does not intend that a local program be prohibited from purchasing a commercially available package at a discounted price.

In order to respond to this comment, the Department further conforms the definition to the concepts in the FAR, and the word "unmodified" is removed. This change recognizes that some modifications may be made to a package to meet special JTPA requirements, just as a commercial entity would offer to other customers, while the package remains substantially similar to that regularly offered. A test for whether the package remains substantially the same as that regularly offered is whether the modification does not involve an increase in the catalogue price. An increase in catalogue price would indicate that the package is not substantially the same. However, a price decrease due to such things as volume discounts or good negotiating is not, in itself, indicative of a modified package.

Another test is whether the same training components continue to be offered in the package. A difference in the training components would indicate that the package may not be substantially the same. All of these tests should be considered in determining whether a training package meets the definition. Further, JTPA funds should not be used to make any modification to a training package. Should training packages be modified in order to conform to JTPA requirements, they may be considered commercially available off-the-shelf only if they comply with the remaining requirements listed in the definition. Thus, while some modification is possible, the definition is not intended to include "customized training," training designed solely to meet the

special needs of an individual or group of JTPA participants.

A few commenters asked for a definition of "substantial" in regard to the quantities sold. In response, the phrase "in substantial quantities" is removed from the definition because the Department believes that the concept is embodied in the idea of "being sold to the general public" which follows in the definition. For further guidance, the FAR indicates, with respect to being sold in "substantial quantities", that "[N]ominal quantities, such as models, samples, prototypes, or experimental units, do not meet this requirement." Further, there were suggestions that an amount such as 25 to 30 percent non JTPA sales may be useful to States and SDA's when setting policy in this area. The definition that is provided conforms to the FAR definition; therefore, it is not being changed.

A few commenters wondered if community-based organizations (CBO's) and non-profit organizations were included within this definition. Such organizations may be among the types of organizations that provide a "commercially available off-the-shelf" training package if the training packages they provide meet the definition.

Several comments reflected confusion about the relationship of "commercially available off-the-shelf training packages" to "vendors" and "subrecipients". It is important to recognize that the definitions of "vendor" and "subrecipient" and the definition of "commercially available off-the-shelf training package" exist for different purposes and should not be viewed as related. An agreement to acquire a commercially available off-the-shelf training package may create either a vendor or a subrecipient relationship, depending on the content of the package. If the package contains elements that meet some of the distinguishing characteristics of a subrecipient (see definition), then a subrecipient relationship is created.

Regardless of whether a vendor or subrecipient relationship is created, the costs of the commercially available off-the-shelf training package may be charged entirely to the direct training category. However, other JTPA requirements such as record retention, audit, etc. do apply to a subrecipient.

The intent of the definition of "commercially available off-the-shelf training packages" is to provide states and SDA's broad flexibility to utilize generally available training services and to be able to charge those services entirely to the training cost category. It will, for example, permit states and SDA's to purchase training from a variety of educational institutions at off-the-shelf or catalogue prices. It must be recognized, however, that there are limits to the flexibility that the definition affords. One important limitation is that the definition only applies to the provision of actual training services to eligible JTPA participants. It does not apply to intermediate administrative entities or entities that pass funds through to training providers. Another limitation is that the services must actually be available to and provided to significant numbers of persons or to entities that procure training for such persons under other state or federal programs outside the JTPA system. It will not be sufficient for a training provider merely to claim that its services are available to the general public or to other training programs (like the JOBS program). The state or SDA must be able to show that the services actually are available to the public or to other programs and that the services are utilized by them. If a training provider has a history of providing training only to the JTPA program or to JTPA participants, it will not be considered a provider of "commercially available off-the-shelf training packages".

Although not a part of the definition, section 141(d)(3)(A) of the Act also requires that "commercially available off the shelf training packages" be purchased competitively. The requirements for competitive procurement are covered in the procurement provisions of the regulations at § 627.420.

Family

Several comments were received on the definition of the term "family" at § 626.5 of the interim final regulations. In general, the nature of these comments was that: (1) The definition is too restrictive and limits the Governor's flexibility in defining the term; (2) the definition does not recognize alternative living arrangements that do not fit neatly into the "traditional" concept of a family; and (3) the regulations do not address how to handle other family members, including dependent adults, living in the same residence. A few of the commenters noted that an apparent conflict exists in how "family" is defined in the interim final regulations and how it is treated in the Standardized Program Information Report (SPIR) instructions.

The term "family" was statutorily defined in the 1992 Amendments for the purposes of income eligibility determination for receipt of JTPA services. The interim final regulations provide the Governor with flexibility to interpret the term "family" concerning how "dependent children" are defined for JTPA programs. The interim final rule also defines the phrase "living in a single residence". The statute established a standard definition to apply consistently for JTPA programs, which, within the three categories, covers the vast majority of family configurations and living relationships in the country. The definition is not intended to address every possible permutation of alternative living arrangements.

Although the Department believes that the regulations provide the Governor with some latitude in defining the term "family", the comments raised an issue regarding the adverse effect of excluding "dependent adults" from the definition, which warrants further consideration. While the Department recognizes that excluding dependent adults may impact on the eligibility of some family members, the Department does not believe that this circumstance is included in the statutory definition. The Department does not believe that it has the authority to expand upon the definition of "family" beyond the categories specifically found at section 4 of the Act. No change is made in the final regulations. Other individuals living in the same residence, who are not dependent children, would be viewed as individuals in applying for and being determined eligible to receive JTPA services.

A few of the commenters accurately noted the difference between the definition of "family" in the interim final regulations and the SPIR instructions regarding the treatment of an individual with a disability for the purposes of eligibility determinations. The SPIR reflects the definition of "family" in the regulations in effect prior to the publication of the December 29, 1992, interim final rule. The definition contained in the interim final regulations indicate that an individual with a disability "may", for the purpose of income eligibility, be considered to be an unrelated individual who is a family unit of one. This change was an administrative error and should not have been included in the interim final rule. Accordingly, the definition of "family" is amended to revise the word "may" to "shall" in the final regulations. This amendment is consistent with the provisions at section 4(8) of the Act defining the term "economically disadvantaged".

Family Income

A few comments were received on the change in the definition of "family income" and the method for calculating

such income for the purposes of determining eligibility for JTPA services. In general, the nature of the comments were that: (1) The use of the Department of Health and Human Services' (HHS) poverty guidelines appears to conflict with the definition of "economically disadvantaged" at section 4(8) of the Act; (2) the definition does not include certain payments that have previously been excluded from family income; and (3) the old definition of "family income" should be retained, with the Governor defining the term for the purposes of income eligibility determinations, as has been the case since the inception of JTPA.

A few commenters accurately noted that certain payments that have always been considered to be "public assistance" were omitted from the interim final rule. This was an inadvertent oversight in developing the regulations. The definition of "family income" is amended in the final rule to reflect that "public assistance" still includes Aid to Families with Dependent Children (AFDC), Supplemental Security Income, Emergency Assistance money payments, and non-Federal funded General Assistance or General Relief money payments, which are exclusions from income for the purposes of income eligibility determinations. In addition, certain other Federal statutes exclude additional types of payments from JTPA income eligibility determinations. For example, Pell grants are specifically excluded by title IV of the Higher Education Act, as is income earned while on active military duty and certain other veterans' benefits, identified at 38 U.S.C. 4213. These exclusions are incorporated into the final rule. There also has been concern expressed regarding the inclusion of Social Security benefit payments as income in determining eligibility for older individuals. It has been noted that many older individuals fall just above the income threshold for JTPA because of the inclusion of Social Security benefits and, therefore, are being denied needed JTPA services. The Department recognizes that older individuals have special needs which warrant consideration for their participation and inclusion in programs under JTPA. In the interest of responding to such needs, the Department is amending the regulations in the final rule to permit the Governor to exclude 25 percent of regular Social Security benefits from family income. The Department believes that this change will address the concerns of the commenters.

A few commenters raised the issue that the HHS guidelines include scholarships as income. They expressed concern that individuals who may receive scholarship assistance based on need, but who are otherwise economically disadvantaged, would not be eligible for services if such assistance is counted as family income. In addition, they pointed out that the inclusion of such needs-based assistance would also impact the eligibility of another family member who would otherwise be eligible for services, regardless of whether the individual receiving such assistance applies for JTPA services. The Department finds merit in the comments and is amending the definition of "family income" to add "needs-based scholarship assistance" to the exclusions from family income. To the extent that existing guidance has been interpreted to require the inclusion of needs-based scholarship assistance as family income, these regulations supersede any such guidance.

A few of the commenters noted that the interim final rule appeared to indicate that only use of the poverty level applied in determining eligibility. This conflicts with section 4(8) of the Act, which indicates the use of the higher of the poverty level or 70 percent of the Lower Living Standard Income Level in determining economically disadvantaged status. The Department acknowledges that the preamble language could be misinterpreted. The reference to the use of the HHS poverty guidelines as the standard for determining economic disadvantage pertained to the use of the HHS guidelines to define family income, and not to indicate requirements different from those found at section 4(8) of the Act. The HHS guidelines, with the exceptions noted in the definition of family income, would be used to determine income, and that income figure would apply for the purposes of income eligibility determinations under section 4(8) of the Act.

Of the several comments received on the term "obligations", most commenters were satisfied with the definition and asked that it not be changed. A few commenters wanted it changed as they believed that, as defined, very little, if any, funds would be reallotted or reallocated. No change is made to the definition, but the issue of reallotment is further treated in the discussion of § 627.410.

One commenter pointed out that the term "service provider" was defined by statute in section 301(b)(3) of the Act. The definition in these regulations is amended to conform to the statutory definition.

The definition of "stand-in costs" is revised, along with the regulation at § 627.480(f) (which had been paragraph (g) in the interim final regulation), so that both provide the same criteria as to the time when such costs were incurred and the cost category to which they are chargeable.

Several other comments were received on the definition of "vendor", most of which generally fell into two groups. One group encouraged referencing the definition of this term contained in the Office of Management and Budget (OMB) Circulars A–128 and A–133. The other group requested more clarification or examples. A few commenters raised questions of whether vendor goods or services could be customized, or the extent to which they could be altered, and still meet the vendor definition.

The Department is applying the standard Federal Government-wide description of the term "vendor", as it already exists in the audit requirements and related literature of OMB Circulars A–128 and A–133. However, A–128 does not contain a definition of the term "vendor" and the A–133 definition appears to limit the term to providers of administrative goods and services. For those reasons, and, as explained in the preamble to the interim final rule, the Department draws upon the Questions and Answers developed by the President's Council on Integrity and Efficiency (PCIE) and OMB for its definition. The PCIE document carries the vendor definition beyond administrative goods and services and provides examples.

With regard to the question on whether vendor goods or services could be customized or modified, the Department believes that the package may be modified to meet JTPA requirements if the vendor modifies its goods or services for other customers and if it remains substantially the same as those goods or services regularly offered. An indication of whether vendor goods or services are substantially the same as those regularly offered is whether the price does not increase when it is modified. No change is made to the definition in the final rule.

The Major Changes in Part 627—General Provisions Governing Programs Under Titles I, II, and III of the Act are as follows

Subpart B—Program Requirements

Governor/Secretary Agreement

Section 627.200 was amended in the interim final rule to require that guidelines, interpretations, and

definitions adopted by the Governor be published. A few commenters raised the question of what constituted "published".

The word "published" is removed in the final rule and the word "issued" is substituted. Also, language is added to indicate that such guidelines, interpretations, and definitions adopted by the Governor are to be those that actually have been imposed or utilized, consistent with section 124 of the Act. The word "issued" is used to better reflect the purpose of the requirement that the guidelines, interpretations and definitions on which the Governor relies are to be made public prior to their effective date and to assure that they are actually being used in the administration of the JTPA programs. How the Governor chooses to inform the public may vary and may depend upon the nature of the action. It may include means such as issuance of written directives or letters, inclusion in an electronic network or bulletin board, publishing in a newspaper, or other public announcement in which the effective date is indicated.

Waivers

In the interim final rule, the Department requested comments on the feasibility of authorizing waivers to the JTPA regulatory requirements. Recently, it has been suggested that some of the administrative burden or unintended effect of regulatory requirements may be reduced through the granting of waivers—specifically waivers of regulatory requirements. This was recommended in the recent report of the National Performance Review, "Creating a Government That Works Better and Costs Less." The Department believes that there is merit in this concept and incorporates a waiver provision in these regulations. Therefore, a new § 627.201 is added which permits the Governor to request, and the Secretary to approve, waivers of the regulations for up to four years. The request from the Governor must be consistent with the provisions of the Act and demonstrate how the waiver will meet one of the criteria listed in the regulation.

Absent specific statutory authorization, the Secretary has no authority to waive statutory requirements. The Secretary may, however, waive provisions of the regulations which expand upon, interpret or explicate statutory requirements. The new regulation is intended to permit waivers of any regulatory provision as long as the waiver does not affect the basic statutory requirements and if it is shown that the waiver will improve services, increase skill or educational attainment, promote coordination or substantially improve the job placement outcomes of the JTPA program. For example, a State may seek a waiver of the 25% disregard for social security income for older workers since that rule is not mandated by the Act. To obtain such a waiver, a state would have to demonstrate that it would not reduce services to those most in need. On the other hand, a state could not obtain a waiver of the regulatory prohibition on using JTPA funds to support employment generating activities since that regulation simply repeats a clear statutory requirement. In a more complicated situation, a state could request a waiver of some of the detailed requirements of the procurement regulation (§ 617.420) if those requirements conflicted with its own procurement system. In order to obtain such a waiver, however, the state would have to show that its system adequately addresses all of the minimum requirements listed in section 164(a)(3) of the Act and that it would promote coordination with other programs or would result in either better quality services or better employment outcomes if the same procurement system were used by those programs.

The Department assumes that the States and SDA's/SSG's are more aware than is DOL of what waivers they may need. Thus, the Department does not intend to provide immediate general guidance on what waivers may or may not be requested. As the Department determines which waiver requests it will grant and which waivers lead to greater coordination or better program results, guidance will be issued to enable the JTPA system to better understand the waiver process and to learn about what practices work.

Public Service Employment Prohibition

No comments were received on this section. Section 627.205 remains unchanged, except for extending the public service employment prohibition to include title II–C funds.

Nondiscrimination and Equal Opportunity

The JTPA Amendments amended section 167 of the Act to require that the Secretary issue final regulations which would clarify the application of the nondiscrimination and equal opportunity provisions of the JTPA and provide uniform procedures for implementing these provisions. On January 15, 1993, the Directorate of Civil Rights (the DOL agency responsible for enforcing the various Federal nondiscrimination and equal opportunity statutes applicable to federally assisted programs) promulgated a final rule to implement the nondiscrimination and equal opportunity requirements of the JTPA (29 CFR part 34; 58 FR 4742). Throughout these final regulations, all of the Department's nondiscrimination and equal opportunity regulations (29 CFR parts 31, 32, and 34) are cited since they are all applicable to JTPA federally assisted programs. In order to eliminate the burden of complying with overlapping regulatory requirements, 29 CFR part 34 provides that compliance by JTPA recipients with part 34 constitutes compliance with the Department's Civil Rights Act of 1964, title VI regulations (29 CFR part 31) and with specified portions of the Department's Rehabilitation Act section 504 federally assisted program regulations. 29 CFR part 32, subparts A, C, and E.

A few commenters, in connection with § 627.210(a)(3), questioned the cost category to which expenses for "accessibility" and "reasonable accommodation" should be charged. This matter is treated in the discussion of § 627.440, Cost classification. In addition, a commenter noted that this provision of the regulations should not be construed to otherwise relieve a recipient or subrecipient from their responsibility under the law to provide for "accessibility and "reasonable accommodation". The Department agrees and the final rule is modified to indicate that the provision applies only with regard to needs for the JTPA program.

Relocation

Section 141(c) of the Act was revised substantially to prohibit the use, or proposal for use, of JTPA funds to induce or to encourage the relocation of a company when such relocation results in the loss of employment of any employee of the company at the original site. That section also prohibits certain assistance to any relocating company for the first 120 days after the company commences operations at the new or expanded location, if the relocation results in an employee's job loss at the original site. If the Secretary finds that the State, SDA, or substate grantee (SSG) has violated either provision, fines are levied equal to twice the amount of funds expended. If the State, SDA, or SSG demonstrates that it neither knew nor reasonably could have known (after an inquiry undertaken with due diligence) that the funds it provided were expended in violation of these provisions, then only the amount expended is repaid.

Some commenters questioned whether these provisions prevent SDA's/SSG's from placing participants in certain job openings for a set period of time. The Department believes that they do under circumstances in which there are job losses in other geographic areas or in which workers are laid off or experience periods of unemployment. By clarifying and standardizing terms, as well as setting the prohibition on assistance at 120 days, the Act systematizes the administration of this prohibition on relocation. Most of the comments on the interim final rule pertaining to these provisions focused on the need for clarification of terms such as "labor market area", "loss of employment", "commercial operations", "pre-award review", "induce" or "encourage", and on the extent of an SDA's due diligence and local liability.

Section 627.215(c) defines a "relocating establishment" as a business entity moving operations "from a facility in one labor market area within the United States and its territories to a new or expanding facility in another labor market area." Commenters pointed out that some rural labor market areas may encompass vast areas and several counties. Section 4(13) of the Act provides a definition of "labor market area" as "an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such areas shall be identified in accordance with criteria used by the Bureau of Labor Statistics of the Department of Labor in defining such areas or similar criteria established by a Governor." The key to the Act's definition is that the labor market area be "an economically integrated geographic area" where an individual can change his or her employment without changing his or her place of residence. Thus, for purposes of this relocation provision, a large rural SDA could contain more than one labor market area.

Several commenters asked for a clarification of "loss of employment". One stated that when employees at the original location do not accept relocation job offers and then are laid off, "loss of employment" has not occurred. The Department believes that, in such a situation, loss of employment is presumed when a person no longer has a job with the company at the original location or with any other entity because of the relocation and the loss of employment at that location would not otherwise have occurred. This does not include those who would have retired or quit regardless of the relocation, or those who were fired for cause.

Several commenters requested further guidance on commencement (or expansion) of commercial operations. The Department added the term "commercial" to the regulations to be consistent with the statutory intent that a viable prohibition on JTPA assistance in the day-to-day production of goods and services be observed. The term "commercial" operations is intended to further distinguish between the construction and operation stage of a business, as well as to demarcate the stage when products are being produced for commercial distribution.

Similarly, a number of commenters asked whether ongoing JTPA contracts with a company must be stopped or interrupted when the company relocates work from another facility. The Department believes any such contracts with the business within the SDA to which the company has relocated must be ended for the duration of the time work is being relocated, since ongoing JTPA assistance was not meant to accommodate business needs which are the result of work relocation from another facility.

Additional clarification was also requested on the treatment of relocation scenarios where large retail store chains close down some sites sequentially and then open others in widely dispersed locations. The Department believes that the Act only applies to such cases where a company closes a retail store in one location in order to move that retail store's business to another location.

Section 627.215(d) requires a pre-award review to be completed to document compliance with section 141(c) of the Act. Several commenters asked for clarification, and one recommended that the States be responsible for developing the standardized pre-award format. Others voiced concern about whether SDA's should be held liable if relocation occurred despite pre-award assurances to the contrary; several stated that a properly completed pre-award review should prove due diligence on the part of the SDA and that sanctions otherwise are unduly harsh. The Department believes that these reviews are for the protection of the State and the SDA/SSG. Section 627.215(d) is revised to provide additional guidance for States and SDA's in developing standardized pre-award review procedures and to indicate items which should be included in a review. Information should include the names under which the facility does business, including successors-in-interest, the name, title, and address of the employer supplying the information; the name and address of the facility in the other geographic area which is being closed or from which business is being transferred; the nature of the products or business being transferred to the new location; the date the facility will commence or expand operations; and a statement from the employer about job losses at the old location. The SDA also should check with the former location to verify the employer's statements about job loss. The Department believes that a review based upon the suggestions in the regulations is evidence of due diligence, but does not hold the SDA harmless when it is subsequently shown that the statute was violated because the Act provides that the Secretary shall require repayment.

It is important to note that assistance to relocating businesses is not an entitlement. Once the State complies with the minimum requirements set out in these regulations, it may be more restrictive in its assessment of the company's situation or its determination of policy regarding relocating employers.

One commenter stressed the importance of monitoring to ensure the use of consistent pre-award reviews and also recommended that the SDA/SSG consult with all affected parties, including union representatives at the original and relocated site if relocation is indicated and JTPA assistance is sought. Although not required by the regulations, the State should consider incorporating such procedures in its guidelines for the pre-award review. Before engaging in negotiations with any company interested in moving to the area which seeks future JTPA assistance, the SDA/SSG should initiate a pre-award review.

Finally, a few commenters asked what constituted "inducement" or "encouragement" to a company to relocate. The Act provides that "[N]o funds provided under this Act shall be used or proposed for use to encourage or induce the relocation, of an establishment or a part thereof, that results in a loss of employment for any employee of such establishment at the original location." Thus, JTPA funds cannot be used in any manner for this purpose. Similarly, JTPA funds cannot be used under the prohibitions concerning employment generating activities (Section 141(q)). One commenter asked whether written material containing a general description of JTPA programs could be distributed to the local Chamber of Commerce. The Department does not

believe that providing material to a Chamber of Commerce which provides a general description of JTPA programs would fall within the prohibition of the Act unless the purpose of the material were to induce or encourage relocation. This regulation is not intended to affect what the Chamber of Commerce does, as long as JTPA funds are not used.

Guidance on the Issue of Duplicate and Overlapping Payments Among Federal, State, and Local Programs, Including Pell Grants

Section 627.220 clarifies the interpretation of sections 107(b) and 141(b) of the Act. This section also highlights the importance of coordination with programs under title IV of the Higher Education Act of 1965, as amended (HEA), in view of the new coordination provisions at sections 205 and 265 of the Act, which require SDA's to enhance the provision of services through coordination with other programs.

The purpose of coordination requirements is to preclude duplicate or overlapping payments among Federal, State, and local programs to participants and training institutions and to ensure that the best mix of programs and funds is available to the JTPA participant. Accordingly, § 627.220 assigns responsibility to the SDA's to coordinate the sharing of information that affects JTPA-funded programs with the school's financial aid officer, provides for contractual safeguards to prevent duplication or overlap of services and funding among programs, and emphasizes the requirement for assessing the JTPA participant's financial needs and available resources as part of the individual service strategy (ISS). These matters will also be addressed through technical assistance and guidance jointly developed between DOL and U.S. Department of Education officials in order to guide both systems in the development of constructive working relationships.

Comments were submitted on a number of issues addressed in this section. The issue of whether JTPA funds should pay for tuition or supportive services in coordination with other payment programs was raised by some who recommended that clearer instructions be provided. The exact mix of funds should be determined according to the availability of each funding source for either training costs or supportive services, with the goal of making the program affordable and enabling the participant to successfully complete it.

In addition, commenters were concerned about the complexity of procedures needed to ensure compliance with sections 107(b) and 141(b) of the Act. The Department agrees with the need to streamline procedures. Accordingly, § 627.220 is revised to reflect the following changes: § 627.220(b)(2) is deleted, and § 627.220(b)(1) now directs the SDA to assist the participant early in the objective assessment, as appropriate, to establish eligibility for HEA, title IV financial assistance programs. In addition, § 627.220(b)(4) now emphasizes that participants may, but are not required to, apply for or access student loans or incur personal debt as a condition of JTPA participation. While the use of student loans to finance training or education is not prohibited and may be explored in the assessment process, loans should only be used if the participant agrees and is made fully aware of the responsibilities that the loan entails. Participation in a JTPA program may not be conditioned on applying for or using a loan. Finally, § 627.220(b)(4) clarifies the need for information sharing which must take place for any financial aid awarded after the participant enrolls in an agreed-upon program.

The discussion of HEA student assistance programs in this provision raised a concern that title II participants may be required to access loans. The Department wishes to stress that this is not the case. Section 627.220(b)(4) emphasizes the importance of matching the participant with an affordable program. As a general consideration, individuals should not be required to incur debts as a condition of participating in JTPA programs. Indeed, better identification and coordination of funding sources and improved evaluation of the participant's ability to complete a program successfully as part of the ISS should address the need for personal indebtedness to finance JTPA participation. Thus, § 627.220(a) should not be construed to mean that loans must be considered resources for the purposes of this regulation.

The reason for including HEA, title IV student loans in the information-sharing requirements is that in the past, some JTPA participants have been required or encouraged to take out loans to pay for their training without the knowledge of the SDA's. However, the new requirements for objective assessments and developing ISS's for participants mean that SDA's must take responsibility for evaluating and documenting the participant's financial needs and coordinated ability to pay for an agreed-upon training program before he/she enrolls in the program.

In fact, several commenters stressed the importance of evaluating all potential HEA funding sources as part of the development of the ISS and that these funding sources be identified and applied for while the ISS is being developed. See § 627.220(b)(2).

Since federal Pell Grant eligibility can be established before a student enrolls and a Pell Grant can be used at any participating institution that an eligible student attends, SDA's and SSG's should expedite the application process by providing application forms to individuals and providing assistance, as necessary, in filling out and submitting these forms. Although a few commenters were concerned that undue delays in the provision of services might result, it is important to note that Pell Grant eligibility guidelines are readily available, as is the application form for establishing eligibility, and the financial information required to complete the application is already required to ascertain eligibility for JTPA programs. Furthermore, the Department of Education makes funds available to participating schools before the start of the school year to pay eligible students. These funds can be accessed as soon as eligibility is documented, the cost of attendance (COA) is calculated, and enrollment occurs. Although a few commenters suggested that establishing Pell Grant eligibility might represent an administrative burden, the sequence described herein in fact streamlines the funding decision process for the JTPA delivery system and permits coordination of funding sources in the context of the ISS.

A number of comments questioned a perceived inconsistency between Department of Education and Department of Labor guidance on whether HEA title IV or JTPA funds must be used first. The Department does not think there is any conflict with Department of Education regulations with regard to coordinating with JTPA funding decisions for tuition payments because of the flexibility in the use of the Pell Grant for tuition or other education related expenses. These JTPA regulations only require that, when a Pell Grant is awarded to a JTPA participant, JTPA funds cannot be expended on costs that already have been paid by federal Pell Grant funds.

One commenter questioned the need for including the participant's agreement to the disposition of the Pell Grant in the contract with the school, since it is understood that the participant will sign off on the ISS, which includes information to be shared. Another commenter raised the issue of the Privacy Act as a reason why

schools may not share information regarding JTPA participants with SDA's. To clarify the issue of participant agreement, the final rule includes the participant's agreement to the information-sharing process in § 627.220(c).

Strengthening monitoring provisions was the concern of a few commenters, who stated that requiring the school's financial aid officer to share financial information on JTPA participants with the SDA is key to following up on the participant's ISS and to coordinating JTPA funds with other sources of funding. The Department carefully considered comments which called for reduced coordination requirements but believes that information sharing agreements are necessary to ensure compliance with this section; however, the separate sharing of students' names may not be necessary since JTPA agreements with training institutions will include the names of participants for whom payments to the school are being made. Therefore, this requirement is removed from the final rule.

Several commenters reported that schools are holding JTPA participants personally liable for payments withheld in accordance with the terms of performance-based contracts. Performance-based contracts (or any other agreements with service providers) must prohibit schools from holding the student liable for outstanding charges. Otherwise, the performance-based contract would be undercut because the incentive for the school to perform would be removed. This practice is prohibited by the U.S. Department of Education as described in the Federal Student Financial Aid Handbook, Pell Grant Section. Therefore, JTPA program operators should be aware that the use of certain contracting methods, particularly contracts for classroom-sized projects and fixed unit price, performance-based contracts, affects how educational institutions are permitted to calculate the COA, which determines the amount of the participant's Pell Grant. An institution can include a tuition and fee charge for calculating the federal Pell Grant COA only when contracts or agreements specify the tuition and fees (i.e., individual referrals), when there is a charge recorded to the student (when JTPA or another source pays the tuition and fee charge and the student would be required to pay these charges if they were not paid by JTPA or another source). Two types of JTPA agreements do not allow schools to include tuition and fees in the Pell COA or to make a charge to the student for these costs: (1) Blanket agreements that do not specify an individual amount to be paid by the SDA for tuition and fees but may include a number of students to be trained and an amount of compensation to be paid to the school; and (2) performance-based contracts (to the extent they are still used).

Employment Generating, Economic Development, and Other Activities

Section 141(q) of the Act prohibits employment generating activities (EGA) with JTPA funds. Included in the prohibition are economic development activities, revolving loan funds, capitalization of businesses, contract bidding resource centers, and similar activities.

Section 627.225(b) encourages SDA staff to work with economic development agencies and to participate on economic development boards and commissions to provide information about JTPA. Such participation may assist SDA staff in making informed decisions about community job training needs and the future direction of local JTPA training. In addition, the prohibition of EGA should not be taken to prohibit ordinary employer outreach and job development activities.

Section 141(q) of the Act also includes a prohibition on foreign travel. A number of comments were received requesting that the prohibition in the interim final regulations on using title I, II, or III funds for foreign travel be narrowed. While the Department agrees that allowing foreign travel would be beneficial with the implementation of NAFTA, it was clearly the intent of the Act to restrict the use of funds for economic development and related activities. However, other foreign travel necessary to the conduct of JTPA program may be allowable; therefore, § 627.225(a) is revised to clarify that the prohibition on foreign travel applies to economic development and related activities prohibited by the Act.

A commenter was concerned that a prohibition on foreign travel would prohibit staff from Territorial or Freely Associated States recipients, such as American Samoa and Micronesia, from traveling to a State. While the narrower interpretation of prohibited foreign travel described above should resolve this, the Department wants to clarify that, under section 4(22), such recipients are considered States for JTPA purposes and as such, inter-recipient travel would not be considered foreign travel.

Several commenters requested clarification about what cost categories the remaining allowable EGA should be charged. To clarify, there are no allowable employment generating activities available under JTPA. The allowable activities discussed in this section are otherwise authorized activities and should be charged to the category of benefit determined with guidance provided by the Governor.

Displacement

The provisions in the regulations have not been substantially changed from the prior § 629.4 and closely reflect the provisions of section 143(b) of the Act. No comments were made on this section and no changes are made.

General Program Requirements

Section 627.235 of the interim final rule sets forth some general program requirements for the JTPA program, including specific reference to the provisions of sections 141, 142, and 143 of the Act, reference to the selective service requirements of the Act, continuation of the requirement for timely enrollment, and the new requirements of section 124 of the Act regarding the imposition of State and SDA requirements.

A few commenters suggested setting forth extensive procedures regarding the appropriate consultation and concurrence of organized labor. The Department believes that the provisions of the Act, though somewhat revised, are clear and that in most instances SDA's and others have developed procedures for ensuring that labor is consulted, as appropriate, in the development of training programs, and that the affected labor organization concurs in writing with training agreements when there is a collective bargaining agreement, even if it is not impaired. In the years since the inception of JTPA, this has not systematically emerged as an issue. Accordingly, the final rule is not changed.

One commenter suggested that the only aliens who should be eligible for JTPA participation are permanent resident aliens. The commenter's reasoning is that to serve other aliens in the United States on a temporary basis would waste scarce JTPA resources. The nondiscrimination provisions of section 167 of the Act set forth the requirements for the participation of individuals who may not be citizens of the United States, including those who are not permanent resident aliens. The final rule is not changed.

A commenter suggested that this section be revised to indicate that JTPA is not an entitlement program. The Department believes that the provisions of sections 204(c)(5), 264(d)(6) of the Act and § 628.525 of the interim final rule adequately address this subject by

making it clear that neither eligibility nor participation in a JTPA program creates an entitlement to services. The final rule is not changed.

Several commenters requested clarification of when the "45-day clock" in paragraph (c) begins for purposes of enrollment into JTPA, particularly in light of the new program requirements for targeting and assessment. The Department agrees that such guidance would be helpful and the final rule is changed to indicate that the clock begins with the date of eligibility determination.

In connection with the requirements of paragraph (e), some commenters questioned the method for determining whether a requirement which is a rule, regulation, policy, or performance standard is imposed by a State or an SDA. This question is raised particularly when the Act or these regulations may require the Governor or SDA to develop such a requirement. In general, any requirement that is issued beyond the actual text of the Act or these regulations should be identified to the source (State or SDA) that issues it. This guidance applies only to requirements that are not specifically called for (*i.e.*, "the Governor shall" or "the SDA shall") by the Act or these regulations. Note that, for these purposes, the term SDA as used here includes any entity empowered to act for the SDA including the grant recipient, administrative entity or the private industry council. See also the discussion of § 627.200 above. The final rule is changed to indicate that it applies to State and SDA requirements that are in addition to those of the Act and regulations.

On-the-Job Training (OJT)

Section 627.240 of the interim final regulations sets out requirements pertaining to the on-the-job training (OJT) activity authorized at sections 204(b), 253(a), 314(d) and in title IV of the Act. The interim final regulations dealt with a few broad areas related to OJT, such as the duration of OJT, OJT payments, contracts for OJT, employer and participant eligibility, as well as a definition of OJT. Many of the commenters observed that the requirements for OJT have become so burdensome as to make OJT no longer a viable JTPA training option. The 1992 Amendments made a number of changes in the requirements for OJT programs which are implemented in these regulations. These changes were aimed at eliminating perceived abuses in OJT programs. While it is true that these new requirements do limit some flexibility in operating OJT programs, the Department does not agree that the new requirements in any way make OJT a less desirable or feasible training option. Indeed, the Department believes that OJT is an important training vehicle for the JTPA program. As demonstrated by The National JTPA Study (December 1994), OJT provided "the most consistent positive program impacts on the earnings of adults * * *. Both women and men in this subgroup enjoyed large positive earnings gains that were statistically significant and sustained throughout the 30-month follow-up period." The Department believes that entities which deliver OJT will find that these final regulations set forth only those requirements which are necessary to preserve the integrity of the OJT activity and to ensure that it remains an effective training tool.

With regard to the definition of OJT in paragraph (a), it is essential to recognize that by using OJT, the JTPA system is purchasing occupational training needed by a participant—often training not elsewhere available, which is provided through employment that will usually continue with the employer after the training is completed. (Note the provisions of paragraph (a)(2) of the final rule regarding placement of OJT participants with other employers). The objective of OJT is not, as suggested by some commenters, to subsidize wages or to reduce an employer's wage costs, but to purchase training and to provide an opportunity for JTPA participants that they might not otherwise have. The contents of paragraph (a) are reorganized into three subordinate paragraphs for better clarity. Language is added in a new paragraph (a)(1) to clarify the definition of OJT by: (1) Making reference to the ISS as part of the process for determining whether an individual should be offered OJT, (2) making specific reference to the OJT agreement, and (3) making specific reference to the principle that the purpose of the OJT arrangement is to purchase training in exchange for reimbursement of the employer's extraordinary costs.

By far the most prevalent comment on the interim final rule was that the Department needed to clarify the provisions relating to the limitations on the duration of OJT which were contained in paragraph (b) of the interim final rule. The final rule clarifies the durational rules for OJT. The basic rule is that OJT is to be for the length of time normally needed for training to acquire the skills needed to perform the occupation up to a 6-month length of training. OJT may not exceed that 6 month maximum training period except in cases in which the training is less than full time and the training period will exceed 6 calendar months. In that case, OJT may not exceed 500 hours. To more clearly convey these rules, paragraph (b)(1) is broken into four subordinate paragraphs. Paragraph (b) is also reordered for greater clarity. Six months of training is defined as the amount of time an employee would work on a regular or full-time basis in the occupation for which the OJT contract is written in a 6 month period. If the training period is shorter, the training time is still considered to be the amount of time an employee would work on a regular or full-time basis for that period.

Commenters observed that OJT contracts were usually written in terms of hours and wondered how this related to the 6-month limitation. The Department wishes to promote local discretion in developing OJT contracts; therefore, the regulations do not prescribe a particular time category by which SDA's designate the 6-month period, so long as the designation is consistent with the purpose of the statutory limitation. For example, the 6-month training period may be expressed in the number of hours (usually not more than 1,040 working hours), days (180 days), or weeks (26 weeks in 6 months) that an individual would work full-time in a 6-month period. Contracts for OJT which are expressed in any of these ways will be acceptable. In simplest terms, an OJT employee who enters employment on May 1 and works continuously on a full-time basis on the OJT occupation would complete 6 months of training on October 31. Whatever time category the SDA chooses to use to designate the duration of the OJT contract, it should treat any adjustments (such as those provided for in the discussion below) in the same terms, so if there is an adjustment for illness to a contract written in working hours, the adjustment will be made in working hours, not weeks or days.

If the OJT period is interrupted for a full day or more by events beyond the OJT trainee's or the employer's control, such as holidays, illness, plant downtime, or strike, such time may be added to the original period. Thus, using the time period of the above example, if an OJT participant is in OJT to learn a machine operation but is ill for 10 working days (approximately 80 working hours, two working weeks, or one-half of a working month) the OJT period may end approximately November 11 through November 15 (instead of October 31) depending on how duration is designated in the contract. (The employer would not be reimbursed for the period in which the

participant is not in the OJT occupation.) The objective of this rule is to assure that the participant receives the full period of training (up to 6 months) in the occupation for which the OJT contract is written. This rule, of course, applies only to time that a participant was scheduled to spend in the actual OJT activity. It does not apply to any of the participant's other activities, either in training or outside of their OJT employment.

Several commenters expressed the concern that the regulations were too prescriptive in requiring OJT in higher skilled occupations. The language of § 627.240(b)(2) of the interim final rule was merely intended to encourage the use of OJT in higher skilled occupations. Language is added to the redesignated § 627.240(b)(5) to make this clear. Other commenters were concerned that the 6-month limitation was inconsistent with providing training in very high skilled occupations. The Department agrees that there are some higher skilled occupations for which OJT training may not be available because of the 6-month limitation. Nevertheless, that limitation is statutory and cannot be ignored. The Department believes that there are still a number of higher skilled occupations for which OJT is appropriate and that it is consistent with both the nature of OJT and with the intent of the Act that States and SDA's seek to use OJT to provide training in those kinds of occupations. Therefore, the language encouraging OJT in higher skilled occupations remains in the final regulation. The Department wishes to acknowledge several comments by noting that, while it encourages OJT in high-skilled occupations, this is not a strict requirement. Also, while OJT contracts may recognize training times that are longer than 6 months, JTPA reimbursement to the employer is limited to 6 training months.

A number of commenters wanted to know how the 500 hour exception to the 6-month limitation works. First of all, it should be repeated that the overall limitation on the duration of OJT is 6 months, not 500 hours. This exception will apply in only a limited number of situations, such as in the cases of individuals who are disabled, who have limited employment availability due to child-care or other needs, or who must work a limited or part-time schedule. The final rule makes it clear that individuals who have not received 500 hours of OJT within 6 months may receive 499 hours of OJT, even if this results in OJT in excess of the 6-month duration. The 499 hour figure is used because it reflects the "less than 500 hours" language contained in the Act. For example, if an individual works for 15 hours a week and 6 months later has only been in training for about 360 hours (roughly 60 hours a month for 6 months), the participant could be continued in OJT for up to another 139 hours. The objective is to assure that participants who must work limited or part-time schedules receive up to 499 hours of OJT, in situations when up to 499 hours of training is appropriate.

In response to a comment that the interim final rule unnecessarily requires that the regular training duration provided for in a standard reference be reflected in the participant's ISS, the final rule provides that the training time for OJT must be reflected in the ISS only when the training time varies from the average training time for the occupation, using the methodology adopted for computing training time. Thus, when greater or lesser OJT periods than those provided in standard reference works are necessary, the variation must be reflected in the participant's ISS.

Several commenters noted that the language in paragraph (c)(1) of the interim final rule regarding employer payments is more restrictive than the provisions in the Act. In response to these comments, the final rule is revised to use the language of the Act, which provides that payments shall not average more than 50 percent of the wages paid by the employer to such participants. This change provides the SDA with some flexibility in structuring OJT contracts with an individual employer for multiple participants. Compliance with the statutory requirement is based upon the total allowable wage base (i.e., regular wages and scheduled increases reflected in the contract) for all JTPA participants. Additionally, in response to comments which questioned the wage basis for OJT reimbursement, the final rule clarifies in paragraph (c)(2)(ii), that OJT reimbursement may be based upon regular pay and scheduled increases, and not, as provided in paragraph (c)(2)(iii), on overtime, shift differential or other premium pay. The Department believes that regular pay and regular scheduled pay increases reflect the wages specified in the Act and that overtime and shift differential do not imply a greater level of training cost to the employer. Finally, to clarify a longstanding issue in regard to OJT, paragraph (c)(2)(iv) indicates that payments are not to be based on time when the participant is not in training such as on holidays. Such time may also be excluded from the calculation of the duration of OJT.

Section 141(g)(1) of the Act provides that payments to employers "are deemed to be" in compensation for the extraordinary costs associated with training JTPA participants. Section 141(g)(3)(A) of the Act provides that each contract "specify the types and duration of on-the-job training and other services to be provided in sufficient detail to allow for a fair analysis of the reasonableness of proposed costs * * *." This latter requirement was reflected in the interim final rule. Some commenters raised a question about the apparent conflict between these provisions, and the Department wishes to clarify this area. The final rule prohibits the imposition of a requirement on employers to document extraordinary costs. The Department believes that payments to employers should not produce a recordkeeping burden on employers by requiring the documentation of extraordinary costs that would unnecessarily make OJT a less desirable training option.

The purpose of § 627.240(d)(1) of the interim final rule was to reflect the requirements of section 141(g)(3) of the Act. It was not intended to require specific documentation of an employer's extraordinary costs. The Department views the final rule as requiring no more recordkeeping of an employer than is already required of the employer for other purposes, (e.g., an employer would have to maintain payroll records to demonstrate that a participant worked the number of hours that were billed, but payroll records are already required to be kept for a variety of other federal and state purposes). Rather, the Department believes that the intent of this requirement is that the contract accurately reflect the basis for the contract costs, including the number of participants, occupations, wage rates, training content and the duration of training, provisions for adjustment (such as scheduled wage increases), and the basis for any other payments (such as separately scheduled classroom training as described in paragraph (d)(4) of this section).

The final rule is revised to clarify this requirement by removing the confusing language regarding the analysis of the reasonableness of costs and by reflecting the minimum criteria that will be necessary to make the reasonableness analysis.

Several commenters thought that the requirements in paragraph (d)(2) that the OJT agreement provide information on the training by skill area or task was too prescriptive. These requirements have been removed in the final rule.

In addition, in response to a comment seeking clarification of the meaning of

"types" of OJT, this language is removed in the final rule to eliminate confusion. The idea behind this language was simply to capture other kinds of training, such as classroom training, that will be provided in the course of the OJT training period. The more specific language in the final rule will capture the same information. Finally, this discussion does not affect the requirements for broker contracts in which there is to be an adequate reflection of the work performed by the broker.

Section 627.240(f) of the final rule provides that JTPA participants must be assessed and that OJT must be determined in the ISS to be a suitable training vehicle. This provision is also applicable if the participant is referred to JTPA by an employer. If the participant is determined not to be suitable for OJT or for the OJT slot available from the specific employer, the participant is not eligible for OJT with that employer.

A commenter sought clarification of § 627.240(f)(3) regarding OJT with a participant's previous employer, particularly in connection with "upgrading". This paragraph is intended to address a perceived abuse of the OJT activity in which the JTPA program provides OJT assistance to an employer to "train" a previous employee who had been laid off or separated when the proposed participant already has the skills required for the job. The training is in the same occupation for virtually or nearly the same work. In view of the limited availability of JTPA funds and services, individuals previously employed by or recently hired by the employer prior to referral to JTPA should not normally be enrolled in JTPA-funded OJT. In order to conduct skill "upgrading", which is allowable under section 204(b)(1)(L) of the Act, and retraining, conditions for eligibility and participation must be met and there must be a demonstrable difference between the job and skill requirements of the upgraded job into which the participant is being trained and those of the current or prior job. The prohibition against using OJT for "upgrading" with the participant's employer is maintained in the final rule because the Department believes that the JTPA program should not unnecessarily subsidize an employer's normal workforce training expenses. Paragraph (f)(3) is revised to eliminate confusion about whether the rule was intended to address the participant's previous employer or the participant's current employer. The final rule makes it clear that the prohibition applies to both and that it applies only to OJT.

Many commenters questioned the specific provisions of § 627.240(g)(1) of the interim final regulations which require that an OJT "employer who had two or more previous OJT contracts" and exhibited a pattern of failing to provide long term employment would be ineligible for other OJT contracts. They pointed out that it is not possible to establish a "pattern" with two cases. In response to these comments, the final rule is revised to reflect Congress' intent that employers who fail to offer continued employment, unless there is an acceptable reason, should not receive additional OJT contracts and that the State must issue procedures to implement this requirement. The JTPA program should not be used to underwrite an employer's labor turnover. The Department points out that the provision in the interim final rule specified two contracts because, by definition, to have a pattern there must be more than one. The Department accepts that there may be instances in which a policy may use as few as two contracts, or more than two, to establish a pattern and will accept reasonable interpretations of what constitutes a pattern. The Department chooses not to specify what constitutes a pattern and leaves that decision to the State. In the final rule, § 627.240(g) is redesignated § 627.240(h).

A number of commenters objected to the provisions in the interim final rule that required on-site monitoring of each OJT contract and on-site monitoring by an OJT brokering contractor before making payments. The Department acknowledges these concerns and revises these monitoring requirements. The final rule removes the prescriptive requirements for monitoring each contract and specifies that recipients and subrecipients are required to conduct periodic on-site monitoring of OJT employers. The requirements pertaining to the areas to be verified through monitoring remain the same. In addition, the monitoring requirements for brokering OJT contractors remain the same since they are requirements of the Act.

In response to several comments which argued in favor of providing OJT through employment agencies, the final rule also provides a clarification of the conditions under which employment agencies and employee leasing agencies may be eligible for OJT agreements. The purpose of OJT is to provide training through an employer, not to subsidize wages or reduce agency costs. Thus, the final rule indicates that OJT agreements with employment and employee leasing agencies are to specify the employer that provides the training and the entity to be reimbursed the costs of training. Note that the word "temporary" is deleted from the rule since the term "employment agency" includes agencies that may arrange employment on less than a full-time basis.

Work Experience

The provisions of § 627.245 of the interim final rule set forth requirements pertaining to work experience. The work experience activity is related to other activities in which there is work-based training, such as entry employment experience and limited internships, but the activities may differ due to the circumstances of the work experience assignment. Such circumstances could include whether the participant is an adult or a youth, whether the host employer is public, private non-profit, or private for-profit, whether an employer-employee relationship is established, and whether there is an expectation of continued employment, or whether the activity is a short-term training opportunity. For example, entry employment experience and limited internship in the private sector are not allowable activities for adults. "Work experience" is available only in the public or private non-profit sector. The Department acknowledges the relationship among these activities but chooses not to provide specific definitions beyond that for work experience so as not to arbitrarily limit development of types of work-based training activities. The Department wishes to encourage a variety of approaches to these activities. For that reason, § 627.245(a) is revised by deleting the reference to limited internships and entry employment experience.

The definition of work experience clarifies that work experience is primarily a training, not an employment, assignment. The words "employing agency" are removed from the interim final rule to address the concern that work experience automatically establishes an employment relationship.

A few commenters noted that the provisions of paragraph (b) of the interim final rule that dealt with the types of individuals for which work experience would be "suitable" did not adequately reflect the circumstances under which it would be appropriate to use work experience. The final rule is revised to delete this characterization of the individuals for whom work experience is appropriate. The paragraph now only states how work experience is to be designed.

In response to comments criticizing the limitations on the duration of work experience, entry employment experience, and limited internships, the Department has decided to remove the limitations. The Department believes that this change will permit the development of activities that may better meet the individual needs of participants and the final rule indicates that this should be reflected in the ISS. The Department expects that discrete periods of work experience participation will be limited in duration; although, in response to comments and in recognition of successful program models, the Department acknowledges that an individual may benefit from participation in multiple work experience opportunities.

Many commenters asked for removal or revision of the provision that work experience is suitable for individuals who have been "out of the labor force for an extended period of time * * *." They pointed out that this is difficult to interpret, may vary depending on the previous experience and other characteristics of the participant, and is the kind of provision that could unnecessarily lead to varying interpretations and audit exceptions. The final regulations provide only that work experience should promote the development of good work habits and basic work skills. In addition, it is the Department's belief that the work experience activity provides an excellent opportunity to provide non-traditional employment opportunities, in a variety of settings, for women and youth.

Several commenters suggested that the prohibition of work experience in title III be removed or revised. Since title III dislocated workers generally have, by definition, previous employment under which work habits and basic work skills are developed, the provision in the interim final rule is not revised.

Finally, a few commenters asked for clarification of the requirement that work experience be combined with basic or occupational skills training—particularly in light of one of the examples provided in § 628.535. This is addressed in the discussion of § 628.535, but by way of general guidance, the prohibition may not be addressed by combining work experience with any of the other proscribed stand-alone activities such as job search or job club.

Subpart C—Payments, Supportive Services, Benefits, and Working Conditions

A number of comments were received on Subpart C of the interim final rule, Payments, Benefits and Working Conditions. The Department has rethought its positions in response to these comments and the final rule contains a considerable number of changes. Subpart C is revised, retitled, and renumbered. The following discussion is intended to clarify the Department's position on payments and supportive services and identifies the changes from the interim final to the final regulations. In keeping with the Amendments' emphasis on targeting services to the hardest-to-serve and the need for longer-term interventions, these regulations clarify the widened array of payments, supportive services, benefits and working conditions available or required under the Amendments.

The Amendments provide for comprehensive supportive services and for their allocation to the training-related and supportive service cost category. The regulations implement these provisions and also provide for clarification of the various types of payments for title II programs. Some payments can be allocated to the training-related and supportive services cost category while others can be allocated to the training cost category. The treatment of specific expenditures is provided for at § 627.440 of these regulations.

Service Strategy Overview

A number of commenters expressed confusion regarding appropriate documentation procedures and requested clarification on the requirements and the mechanisms for providing payments and supportive services to participants. Several commenters suggested that while the legislation clearly intended to increase supportive services and payments, the requirements in the interim final regulations would probably limit their usage. In response, the final rule is revised to minimize the amount of documentation necessary to establish an individual's need for supportive services and payments while maintaining the necessary safeguards to prevent misuse of program funds.

The final rule is revised to permit a simplified service strategy. For example, under title II, it is intended that a participant, based upon the needs identified in the objective assessment and recorded in the ISS, will be provided or the program will arrange for the necessary payments and supportive services to enable the participant to meet the goals set out in the ISS. The necessary payments and supportive services may be provided or paid for in different ways. For example, participants may receive a payment from a training activity, such as an employer-paid wage for OJT, or work-based training payment for work experience which may be counted toward meeting their needs in addition to other supportive services like child care. Participants may also receive supportive services, such as financial assistance under title II that will provide for the participant's general welfare. If the participant has additional specific needs not met by the supportive services, including a need for financial assistance, title II further provides for an individually determined needs-based payment may be made to the participant.

The final regulation provides for significantly different documentation requirements than did the interim final rule. An individual determination of need, over and above what normally occurs in the objective assessment and ISS, is not required to justify the provision of any supportive service. When a participant is given money rather than a voucher for a supportive service, SDA's and SSG's need not ensure that the payment is exactly equal to the participant's expenditure. The policy of the SDA or SSG may allow for a fixed reimbursement or a schedule of different reimbursement amounts for a type of service, however, the policy must provide the rationale for such amounts. Under title II, if the objective assessment and the ISS indicate that a needs-based payment is also necessary, then that determination will be sufficient to make the payment. A payment may then be made in accordance with a locally developed policy and recorded in the ISS along with the other services provided. Changes to reflect this strategy are made throughout §§ 627.305 and 627.310 of the final rule.

Shifting to more specific recommendations, in response to comments that the supportive services section be separated from the benefits and working conditions section, the supportive services regulations are now found under § 627.310, while benefits and working conditions are now addressed under a new § 627.315. Section 627.300 and the title of subpart C are also amended to clarify these changes.

A comment was received regarding the ability to ensure that services were provided equitably. This concern is

heightened with the reduction in documentation required when providing supportive services and payments. Therefore, a new provision is added at §§ 627.305(a)(3) and 627.310(d) requiring that SDA's ensure, to the extent possible, that similarly situated participants receive similar payments or supportive services, as appropriate.

Payments

A few commenters requested clarification on when payments shall count towards the determination of income for other programs that serve JTPA participants. To clarify, language from section 142(b) of the Act is now included in § 627.305(a)(4). Any payment under JTPA, broadly defined for this section as any JTPA funds received by a participant except OJT wages (since OJT wages are paid by an employer), shall not be counted for purposes of determining income for other Federal or federally assisted programs, except as provided under the Social Security Act. For example, the Department of Housing and Urban Development has issued a policy notice (PIH 92–48, October 16, 1992) which states, "[A]ll payments received under programs funded in whole or part under the Job Training Partnership Act are excluded from Annual Income" for purposes of Public and Indian Housing. The major exception to disregarding JTPA income is under title IV–A of the Social Security Act which governs Aid to Families with Dependent Children (AFDC). The AFDC regulations do allow States flexibility in allowing a dependent child's JTPA income to be disregarded as income for AFDC purposes (45 CFR 233.20(a)(11)), but generally, any JTPA payment to an adult AFDC recipient, except to cover the cost of child care, transportation, work-related expenses or work-related services, is counted as earned income. States are encouraged to work with their welfare departments in developing State policies specifically for JTPA. SDA's also are encouraged to coordinate with their local AFDC agency to determine local policies on income disregards and to consider co-enrollment with JOBS, where appropriate, so that the participant may be aware of all available services.

Section 627.305(a) is revised to include a new paragraph (a)(6) which authorizes SDA's to set fixed levels for payments. Section 627.305(b) is amended by replacing the words "formula or procedure" with the word "policy". These changes permit SDA's to make needs-related payments based on a payment schedule without any other documentation than that used to develop or support the schedule. Only in cases in which a participant's needs exceed the payments available under the payment schedule is any other documentation or justification necessary. The change in the wording of § 627.305(b) also is intended to make it clear that there are no extraordinary documentation requirements to support the SDA's system for payments above its payment schedule. All that is needed is a reasonable policy based on the circumstances of the local community.

Needs-based payments. Needs-based payments may be made in circumstances where fixed or scheduled supportive services fail to meet the needs of an individual to participate. For example, if a standard transportation reimbursement is $2 a day for participants, but a particular participant must spend $10 a day to commute to a training program, this need would be identified in the objective assessment and recorded in the ISS. Then a needs-based payment of $8 could be made to meet that participant's transportation needs. No additional documentation other than the transportation need identified in the objective assessment and recorded in the ISS is required for the initial $2. However, a specific notation of the additional need would be identified in the objective assessment and recorded in the ISS for the $8 needs-based payment. While this payment should be the amount "necessary for participation," it also may be a scheduled or fixed amount (see the discussion of supportive services, below, for an additional discussion on "scheduled" or "fixed amount"), as provided for in the SDA policy.

Incentive and bonus payments. A number of comments were received requesting that the ability to use incentive and bonus payments not be limited to title II–C. Several commenters indicated they would prefer to use incentive and bonus payments rather than a wage or training payment to encourage participant performance. Since it is important to have tools to reward participant accomplishment, and incentive and bonus payments are not prohibited in those titles, the final rule is amended to clarify that incentive and bonus payments also may be made to participants under titles II–A and II–B.

Approximately equal numbers of comments were received requesting that § 627.305(c) require that incentive and bonus payments be based upon attendance and performance as there were comments requesting attendance or performance. Several commenters thought that teaching life skills, such as good attendance, is an appropriate function of JTPA and should be rewardable. Because section 264(c)(2)(D) of the Act uses the word "and", the final regulation is revised to reflect the statutory language. Payments are to be reasonable and commensurate with the behavior being rewarded. The policy for such a payment is to be included in the SDA job training plan, which is approved by the Governor. The provisions of paragraph (c) are amended in the final rule by removing paragraphs (c) (2) through (4), to reflect the simplification of this topic.

Training payments. To permit longer term participation, § 627.305(d) provides for training payments to be paid for certain title II activities, such as work experience and limited internships. Section 627.305(e) provides for training payments for participation in other activities, such as classroom training, if the concurrent work-related activity is for more than 50 percent of the training time.

Several commenters indicated that the work-based training requirement for adults in classroom training combined with work experience at interim final § 627.305(e)(2) may not always be appropriate and was redundant with regard to the requirements of section 204(c)(1) of the Act on workplace context and integration. Therefore, the Department encourages SDA's to link classroom training to the work-based training activity, but the condition for making such payments to adults that the classroom training have a workplace context is removed.

The term "wage" is replaced with "training payment" or "training payment for combined activity" to reflect the rare circumstances when a participant may not be in an employee-employer relationship as defined by the Internal Revenue Service, and also to make clear that the SDA may not be required to make a payment equal to the minimum wage. The minimum wage requirement still exists where participants are receiving wages as outlined in section 142 of the Act. The Department believes that payments in most work-based training activities should be equal to or exceed the minimum wage to better approximate a work setting. With the exclusion of on-the-job training and disaster relief employment, this change from "wage" to "payment" runs through the entire payments section.

Supportive Services. Supportive services are often critical in serving those most in need. The use of supportive services is encouraged to enable the hard-to-serve population to participate in longer term interventions.

The objective assessment and, under title II, the ISS, is the basis for determination of need for a particular supportive service. The major change in § 627.310 is that further documentation of need is not required. Supportive services may be provided in-kind, through cash assistance, or by arrangement with another human service agency when necessary to enable an individual eligible for JTPA training, but who cannot afford to pay for such services, to participate in JTPA-assisted programs. Several commenters indicated that the administrative determination and documentation of participants' actual cost, for example, of lunch or transportation, was unduly burdensome. Given the generally narrow variance in cost for those services, most stated that a single dollar amount, or a schedule of dollar amounts, would be equally prudent. The Department agrees that such a method is acceptable and should be outlined in the supportive services policy of the SDA or SSG. To reduce its administrative burden, an SDA or SSG may set fixed levels of benefit for particular supportive services; e.g., an SDA or SSG may reimburse participants who incurred transportation expenses with identical payments, regardless of actual cost to an individual participant, even though some participants may receive a payment above their actual cost and others may be underpaid.

Section 627.310(a) sets forth the parameters for the provision of supportive services. The preamble to the interim final rule noted that "limited supportive services" were permitted for applicants. A few commenters requested that this be stated in the regulations. This provision can now be found at § 627.310(b). A comment was also received requesting that the "limited" in limited supportive services be defined. The Department declines to define "limited"; rather, the final rule is revised to indicate that such payments may be made to provide the applicant with an opportunity to complete the application process. The Department expects the restriction on the training-related supportive services cost category to act as a natural control on SDA's and SSG's while still permitting flexibility for local level decisions.

Section 627.310(g)(1) provides that supportive services may include financial assistance under title II. In order to ensure a comprehensive system of supportive services and payments, there have been changes to the definition and allowable usage of financial assistance. Financial assistance is intended for the purpose of general support typical of stipends and allowances. A number of commenters indicated that requiring additional documentation in order to receive any type of financial support was redundant, particularly with JTPA's hard-to-serve population. The Department agrees that participants pass through significant income eligibility tests upon entering the program and that additional eligibility checks are unnecessary, inefficient, and discourage the provision of necessary services. Therefore, the final regulations state, at § 627.310(g)(2), that financial assistance may be deemed to be necessary for eligible participants and, as a supportive service, may be a fixed payment or based upon a schedule of payments. The SDA shall include financial assistance in its policy on supportive services.

Section 627.305(g) of the interim final rule dealing with needs-related payments is redesignated § 627.310(h) to reflect the similarity of needs-related payments under title III with financial assistance under title II. However, needs-related payments are the only form of general "cash" assistance (excluding cash provided as a reimbursement for transportation expenses, etc.) allowable under title III.

A few commenters disagreed with the statement in the preamble to the interim final rule that supportive services could not be based on a group characteristic, such as welfare. In light of the other changes made in the final rule, this statement is no longer applicable. In developing the policy called for in the final rule, an SDA may use a group characteristic as a basis for determining supportive service needs. For example, under title II, a financial assistance payment to a participant may be fixed, based upon an income schedule or group characteristic (such as welfare recipient) identified in the objective assessment and reported in the ISS, or may be determined in accordance with another method determined by the SDA.

The regulations reflect the Department's intent that financial assistance be treated as a supportive service for the general welfare of the participant. This assistance is to be based upon the financial needs of an eligible individual to permit the individual to participate in training. With this basic premise, the Department intends that financial assistance payments, in addition to not being considered as income in accordance with section 142(b) of the Act, should not be subject to income and employment taxes. However, all such decisions need to be made on a case-by-case basis.

Benefits and Working Conditions. The provision of § 627.310(b)–(d) of the interim final rule are redesignated and revised as a new § 627.315. One commenter suggested that the regulations should not require participants to work for employers that are violating labor laws. In response, § 627.315(a) is amended to reflect this concern for compliance with applicable labor laws.

In addressing a number of other comments, redesignated § 627.315(b) (§ 627.310(b) of the interim final rule) is amended to clarify that if a State workers' compensation law is not applicable, recipients and subrecipients shall secure insurance coverage for injuries suffered by participants in all JTPA work-related activities.

Subpart D—Administrative Standards

Grant Agreement and Funding. Section 627.405 establishes a new annual grant agreement process to facilitate the obligation, accounting, and closeout of JTPA funds by year of appropriation. No specific comments were received on this section and comments generally related to this section and other sections are responded to in other sections of this Preamble. No changes are made to this section.

Reallotment and Reallocation. Section 627.410 implements the new section 109 of the Act, which requires the Governor to reallocate, among SDA's in the State, unobligated funds in excess of 15 percent of any SDA's program year title II allocation.

A number of commenters responded on the provisions of this section. Almost all of them recommended basing reallocations on obligations rather than expenditures and questioned whether a State could adopt a more restrictive reallocation policy based on expenditures. Most of the other comments were requests that the regulations further clarify the reallotment and reallocation provisions of the Act including an interpretation of section 109(a)(3) of the Act concerning SDA's that have the highest rates of unemployment for an extended period of time and the highest poverty rates. One commenter pointed out a potential conflict between the provisions of section 109 of the Act, which bases reallocation on obligations, and section 161(b)(1) of the Act, which ties reallocation to expenditures. Another commenter raised the issue of whether Title II–B (summer) funds could be reallocated.

Given the legislative history of the statutory provision, particularly the 1991 House Committee Report (H.R.

Rep. No. 102–240, 63 and 64 (1991)), the Department believes that the intent of Congress was to ensure effective, timely use of the funds. The Department previously suggested that another interpretation, based upon the provisions of section 161(b) of the Act, might permit a more rigorous standard, such as expenditure. However, upon further review, the Department believes that the language in the statute is clear in providing that the basis for reallocation is to be the "obligation" of funds and the Department now believes that an interpretation that is more restrictive would be inconsistent with the Act. A new paragraph (a)(2) is added that prohibits the Governor from imposing reallocation requirements that are based on other than obligations. While it may be true, as some commenters suggested, that basing reallocation solely on obligations may lead to last minute obligations of funds which have little program purpose simply to avoid reallocation, the Department is constrained by the statutory language and cannot use that possibility as a basis for varying from a clear statutory requirement.

In regard to further interpretation of section 109(a)(3) of the Act concerning SDA's that have the highest rates of unemployment for an extended period of time and the highest poverty rates, the Department is not expanding on this criterion and is leaving the interpretation of this section to each Governor, as provided in the Conference Committee Report on the Amendments.

Insurance

A few commenters responded to the provisions of § 627.415. A few other commenters on § 627.435, Allowable costs and cost principles, suggested that § 627.435 should include provisions for allowing the costs of contributions to reserves for self-insurance to be specifically allowed in that section.

After considering these comments, paragraph (c) of § 627.415 of the interim final rule is removed and the substance of the second sentence concerning contributions to a reserve for a self-insurance program is moved to § 627.435(h). The first sentence of this paragraph (c) basically repeated the provisions of § 627.315(b), Benefits and working conditions, and is, therefore, unnecessary in this provision.

A few commenters were concerned about the scope of insurance coverage required by the rule. Some asked whether the rule required them to provide insurance coverage for work-related activities or for all training. One thought that the regulation required "no fault" coverage that could be satisfied through an ordinary comprehensive liability policy. Section 627.415 does not address the scope of insurance coverage. Section 627.315(b) requires worker's compensation or similar insurance coverage for work-related training activities. States and SDA's/SSG's should provide such coverage as they deem prudent and as are in accordance with their normal insurance procedures, both in terms of the types of risks covered and the method of coverage (self-insurance or purchase of insurance policies).

Procurement. Section 627.420 sets forth the procurement requirements for titles I, II, and III of JTPA.

Some commenters thought that the procurement portion of the interim final regulations is an example of overregulation, while others believed that the regulations did not go far enough. In response to the comments concerning overregulation, the Department notes that section 164(a)(3) of the Act requires the Secretary to take into consideration the OMB circulars and that these regulations actually represent a pared-down version of the OMB Circulars. As such, they represent less federal regulation than is applied to other Federal grant programs. In response to the comments concerning underregulation, the Department does not agree. The requirements that are established should help maximize competition, ensure fiscal accountability, and prevent fraud and abuse in JTPA programs. The Department believes that the final regulation represents a reasonable balance between providing guidance on the issues on which the Secretary is required to set minimum requirements under section 164(a)(3) of the Act and recognizing the prerogatives of the Governors to develop their own procurement rules, which also is recognized in that provision.

Although at the Federal level there are rules for when to use contracts, grants and cooperative agreements, these rules are not applicable to the JTPA. As a result, what one State calls a contract, another State might call a grant. In order to avoid confusion in these regulations, the following terms are being used: "Award" or "agreement" means a contract, grant, subcontract, subgrant or other type of legal instrument; "awardee" means any one of the entities receiving the award (e.g., contractors, grantees). There was concern expressed over whether buying certain supplies, like floppy disks, at office supply stores and other similar businesses constitutes an award. Through these regulations, an upper limit for small purchases (which can be lowered, but not raised, by the Governor's procurement standards) is established. No further breakdowns are delineated in the regulations. The Governor can, through the State procurement standards, establish other thresholds for the purchasing of consumable materials with credit cards and such, and not require a formalized award process (e.g., competition or cost/price analysis) or document. As an example, the current Federal ceiling is $2,500 per consumable item.

Section 627.420(a) reiterates the requirement established through the Amendments that the Governor establish procurement standards to ensure fiscal accountability and prevent fraud and abuse in JTPA programs. This section further requires the State and local levels to follow procurement policies and procedures used for non-Federal funds, with some caveats, and reiterates the non-duplication requirement contained in section 107(b) of the Act. A small number of commenters were concerned that the requirement that the State and local levels follow their own procurement policies and procedures used for non-Federal funds would result in awards always being made to the lowest bidder without other considerations, such as performance. State and local rules are to be followed as long as they comply with the minimum requirements of the procurement section. One of the requirements for the selection of vendors and subrecipients (discussed below) is that the awarding agency make a determination of demonstrated performance prior to award. If, as a result of this determination, it is apparent that the lowest bidder cannot perform the work at an acceptable level of quality, SDA's should not make an award to that bidder.

A few commenters were concerned that the nonduplication requirement of § 627.420(a)(5) would make it difficult for SDA's to select service providers. This requirement reflects the provisions of section 107(b) of the Act and is necessary to maximize the use of JTPA funds. One of the initial steps in any JTPA procurement should be a determination concerning whether or not procuring such services (whether competitively or through sole source) would be a duplication. The determination of non-duplication need not be exhaustive; it may take into account such things as the cost of the existing services, waiting lists, the effectiveness of the services to be provided, and the likelihood of achieving performance goals. Although there may be entities in the geographic

area which provide the required services, these entities may not provide the necessary customized training or may not be able to provide these services in a timely manner.

A few commenters felt that the vendor/subrecipient distinction (see the definitions sections of the preamble and the regulations) found in other parts of the regulations was not clear in this section. This section is intended to apply to all awards and, for the purposes of this section, the same rules apply to the procurement of awards to both vendors and subrecipients. Thus, the vendor/subrecipient distinction is not treated in this section as it is in other provisions of the regulations.

Section 107(e) of the Act requires that selection of service providers include documentation of compliance with procurement standards established by the Governor. Section 627.420(a) is expanded by adding a definition of procurement to mean the process which leads to any award of JTPA funds. Some commenters wondered if the requirements for a determination of demonstrated performance, contained in § 627.422, Selection of Service Providers, applied to vendors. Based on the definition of service providers, this requirement does apply to vendors. On its surface it may appear that the requirement for a determination of demonstrated performance goes against the requirements for full and open competition. Since the overall goal of JTPA is to provide high quality services to eligible participants, the requirement of the determination of demonstrated performance leads to the meeting of this goal by requiring the selection of entities that can do the work effectively. This requirement further supports the fiscal accountability and prevention of fraud requirements of the Act, since demonstrated performance includes such things as a satisfactory record of integrity.

Section 627.420(b) further delineates the Act's requirement of full and open competition. A few commenters asked for definitions of certain terms, such as "arbitrary action" and "overly restrictive specification." Since each procurement action and system must be looked at on a case-by-case basis, the Department thinks that it would be inappropriate to define these terms. If further definition is required at the State level, the Governor may do so in the guidelines that he/she establishes. A few commenters were concerned that stricter State procurement codes could take precedence over Federal regulations. These commenters are correct; the Governor has the discretion to make the procurement rules more strict. However, the Governor does not have the authority, unless indicated in the law or regulations, to make a legislative and/or regulatory requirement less strict. One commenter felt that paragraph (b)(2)(i) should require an identification of quantities to be purchased. This change is made.

Section 627.420(c) establishes conflict of interest requirements. Although there is a separate subsection that addresses PIC conflict of interest, PIC's were also included in the subsections that address recipient and subrecipient conflict of interest. A few commenters correctly pointed out that by inclusion in the latter, it would make it impossible for companies for which PIC members work to be awarded JTPA funds. This section is amended to remove the reference to PIC members in paragraph (c)(2) and is reorganized to increase clarity. Paragraph (c)(4), which deals with PIC conflict of interest is redesignated as paragraph (c)(3) but remains unchanged. Because of the separate treatment of PIC's and recipients/subrecipients, the portions of paragraph (c)(2), which provide information on when a conflict of interest would arise for either PIC's or recipients/subrecipients, are moved into a separate paragraph (c)(4). It should be noted that the phrase "is about to employ" in paragraph (c)(4)(iv) also applies to cases of negotiation for employment. The language is not changed in order to maintain consistency with the OMB Circulars. The original paragraph (c)(5) is combined with paragraph (c)(1), since both deal with standards of conduct.

Several commenters submitted comments on § 627.420(d). This section is based on OMB Circular A–102, and describes the four procurement methods that are available to JTPA entities. Language is added to § 627.420(d)(1)(i), prohibiting awards from being broken down into several purchases merely to be able to use small purchase procedures. The Department does not intend that small purchase procedures be used improperly to avoid the more formal competitive processes.

The majority of these comments concerned paragraph (d)(4) of the interim final rule (redesignated in the final rule as (d)(1)(iv)), which provides a listing of the circumstances under which recipients and subrecipients may use the sole-source method of procurement. One of the circumstances calls for awarding agency approval of noncompetitive proposals. The final regulations are changed to state that for SDA's, SSG's and subrecipients, the awarding agency provides authorization; for States, the noncompetitive proposal is approved through the State's normal sole source approval process. Without this change, States would have had to submit their proposed sole source awards that do not meet one of the circumstances to the Department of Labor, the awarding agency.

The amendments require that all sole source awards be justified and documented in writing. When a State or other subrecipient identifies specific entities that may be sole-source awardees (e.g., the Employment Service for assessment services) by their subrecipients, the State or other subrecipient that identifies the specific entity is responsible for the justification and documentation that serves as the basis for that specific sole source selection.

In regard to both the OJT and classroom training (CRT) sole source exceptions, there was some confusion concerning the requirement that not only does the procurement have to meet one of the criteria, but also has to be infeasible under small purchase procedures, sealed bids or competitive proposals. Clearly, OJT and individual CRT placements are unique in the procurement world. Neither is usually procured through a competitive Request for Proposal (RFP) process. Although both should be procurable under small purchase procedures, some State rules may not allow this. As a result, the regulations are revised to allow the sole source procurement of OJT (except awards to brokering contractors) and individual CRT without having to demonstrate that the three other methods of procurement are infeasible. This provision of the regulation may be used in the written justification for such sole source authority.

In regard to the sole source exception for procurement of "Enrollment of individual participants in classroom training," some commenters expressed a concern that this would be used to justify sole source awards for the referral of a number of individuals to the same classroom training. This exception may be used to justify a sole source award to place an individual participant in classroom training. If a recipient or subrecipient, over the course of a year, makes sufficient individual referrals to the point that the small purchase maximum is exceeded (either the level established through these regulations or the State established level, whichever is lower), they will be expected to compete the requirement the following year. If it is necessary to procure a class for JTPA participants only, it is not appropriate to use this sole source exception. It may, though, be appropriate to use small

purchase procedures or to justify the sole source procurement of the class through other exceptions.

Several commenters thought that setting up Labor Management Committees should be listed as one of the allowable sole source criteria. The expenses incurred in the formation of these committees promoted by the State's Dislocated Worker Units would be a rapid response expense (section 314(b)(1)(B)), subject to the financial management and procurement procedures of the States. In most cases, it is expected that the costs of setting up a Labor Management Committee would not be great and that small purchase procedures may apply. Therefore, the regulations are not changed. If a committee were to apply to be a service provider, procurement rules would apply. If a committee, as a service provider, were to use JTPA monies to procure services for participants, procurement rules also apply.

Section 627.420(d) is reorganized by redesignating the subordinate paragraphs and including a new paragraph (d)(2), which authorizes units of State or local government or SDA and SSG administrative entities to pass through monies to like organizations, e.g., a public housing authority, and not have the procurement requirements apply. When monies are passed through, the receiving organization must either pass the monies through to a similar organization, or procure services in accordance with the procurement rules. The passing through of funds is a method of transferring monies to the actual entity doing the procuring which is practiced at the Federal, State, and local levels. The new language reflects this acceptable practice. The Department cautions that organizations which may receive pass throughs may also receive funds as service providers, in which case procurement rules will apply to awards to these entities.

A number of commenters submitted comments on § 627.420(e). Section 164(a)(3)(C) of the Act established the requirement that "procurements shall include an appropriate analysis of the reasonableness of costs and prices." Several of the commenters disagreed with the use of the phrase "cost or price analysis" (as compared to "cost and price analysis"). The Department interprets the requirement of "an appropriate analysis" to mean that recipients and subrecipients are required to do whatever analysis (price or both cost/price) is appropriate to their situation. This is supported by OMB Circular A–102, which requires a price analysis alone under very limited circumstances, and requires a price analysis whenever a cost analysis is undertaken. Additionally, the commercial reality is that in many cases you either cannot do both a cost and price analysis (when there are no market prices or historical contract prices available) or it would be superfluous to do both (when what is being bought is available at catalogue prices).

Concern was also expressed over the requirement that recipients and subrecipients perform a cost or price analysis in connection with every procurement, including modifications. Some commenters believed that the paragraph (e)(1) requirement for a cost or price analysis for all modifications should be changed to exclude non-monetary modifications. After consideration of this concern, paragraph (e)(2) is amended to reflect this exclusion. Care should be taken, though, in determining which modifications do not have monetary implications. For example, a modification to reduce the number of participants may, on its face, appear to be non-monetary. This is not the case. A modification to reduce the number of participants, without a corresponding reduction in funding, results in an increase in the cost per participant. Therefore, this type of modification is one which has monetary impact.

Section 627.420(e)(2) describes cost or price analysis requirements. This paragraph is revised in order to make it easier to read, but the requirements are not changed. This paragraph requires recipients and subrecipients to make independent estimates before receiving bids or proposals. This requirement, which also comes from OMB Circular A–102, appears to have caused confusion. A number of commenters felt that SDA's would not be able to develop such estimates, due to the fact that they do not know which specific activities will be offered by a service provider until offers are received in response to RFP's. In those cases where it is not known what specific services will be provided, it will be appropriate for recipients and subrecipients to develop "rough yardsticks," such as cost per placement or cost per enrollee, for specific types of training. These independent estimates are used, in part, as a tool to determine whether or not the proposals are correctly responding to the technical requirements of the RFP. The estimates are also used to determine the reasonableness of costs/prices which are offered. An offer which is priced too low may be indicative of, among other things, an offeror who does not understand the requirements of the RFP. An offer which is priced too high may contain more expensive interventions than are required. Only through the comparison of the costs and prices contained in each offer with the estimate can these potential problems be identified. It should be stressed, however, that the independent estimates are not absolute barriers to accepting higher or lower cost proposals; the estimates are merely meant for internal guidance. An awarding agency may select for award a proposal that is more or less costly than the estimates, if it determines that the costs and price(s) are reasonable and that the services offered meet program requirements. The level of detail that recipients and subrecipients need in developing these estimates may be specified by the Governor in the State standards. Several commenters indicated that awarding agencies should include the independent estimates in the RFP. Under no circumstances is this to be done. Since the purpose of developing the estimates is for internal control, publicizing them would defeat the purpose for which they are developed and might also skew the bidding.

One of the § 627.420(e)(2) requirements for cost analysis comes into play when the offeror is required to submit the elements of the estimated cost. This is clarified by indicating that this requirement applies in the case of subrecipient relationships. Subrecipients are required to allocate costs to the various JTPA cost categories; therefore, they are to submit the separate elements of their costs.

Section 627.420(e)(3) reiterates the requirement of section 164(a)(3)(D) of the Act that "procurements shall not provide excess program income * * * or excess profit." The Act lists some of the factors that shall be taken into consideration in determining whether program income or profit is excessive. Through the regulations, additional factors from OMB Circular A–102 have been added. Further, based on this Circular, the instances when profit or program income is negotiated are defined.

A few commenters on this section, as well as § 627.440, Classification of Costs, raised questions concerning fixed unit price, performance-based contracts (FUPC's), including whether FUPC's could continue to be used and, if so, whether costs could be allocated to the JTPA cost categories based on budgeted amounts or whether they must be charged based on actual costs incurred. Concern also was expressed both over the requirement that offerors certify their costs and the prohibition of excess program income or profit, in relation to fixed-price agreements.

The Department continues to believe that the use of performance based awards may be of significant benefit in serving JTPA customers. In addition, the use of a total fixed price or ceiling price in making awards may also be an effective mechanism. The regulation does not prohibit reasonable profits in the context of a fixed-price agreement. Fixed-price agreements are instruments that place more risk on the awardee than do cost reimbursement agreements. The reason for this is that the awardee, under a fixed-price agreement must perform the work, regardless of the costs to the awardee. In the case of an awardee under a cost reimbursement type of agreement, the awarding agency will reimburse the awardee for its allowable costs. If the awardee under a fixed-price agreement is able to do the work at a lower cost, due to efficiencies in operations, and this increases the level of profit, the awardee is due that additional profit. If successful awardees who have increased profit due to efficient performance are required to reduce their earned profits to the budgeted levels, this would result in a disincentive for organizations to perform their work more efficiently, quickly, etc. If the additional profit results from cost data that was not accurate, complete or current, as certified, then the awarding agency may be able to recoup that excess from the awardee. Thus, the requirement that costs be certified provides a needed protection to awarding agencies. There has been skepticism that fixed price contracts, as utilized in JTPA, did not contain risks for the awardee or operate as performance/outcome based agreements. The system can expect continued high levels of scrutiny by the OIG in the case of fixed price agreements.

In the case of awards to subrecipients, when: (1) The awarding agency has done a cost and price analysis; (2) this analysis has been documented; (3) the conclusions arrived at are reasonable; and (4) the offeror has certified in writing that to the best of its knowledge and belief, the cost and pricing data submitted are accurate, complete and current at the time of agreement on price, the awarding agency may find it appropriate to use a fixed-price type of agreement. The costs of such an agreement may be allocated among the benefitting cost categories based upon the ratios established in the cost analysis.

One commenter did not believe that it was the Department's intent to require SDA's/SSG's to track profit earned by commercial organizations. In point of fact, section 165(g)(1) of the Act requires each State, SDA, and SSG to maintain records with respect to subrecipients, including commercial organizations, that identify any program income or profit earned.

Section 627.420(e)(4) is amended to correct a miscitation from § 627.435(e) to § 627.435(i).

Section 627.420(e)(5) prohibits the use of the cost-plus percentage of cost method. This prohibition comes from both OMB Circular A–102 and the FAR. A few commenters indicated that this was an advantageous procurement method. This Federal-wide prohibition is being maintained in the final regulations due to the fact that these types of agreements provide a disincentive to vendors/subrecipients to reduce costs, since the higher the overall cost of the agreement, the higher the profit. It is recommended that JTPA entities negotiate specific dollar levels of profit, or investigate the possible use of other types of agreements, such as cost-plus award fee. Further, there appears to be some misunderstanding concerning the allowability of using fixed-price agreements. Fixed-price agreements are the preferred type of agreement when using the sealed bid (Invitation for Bids) process. Fixed-price agreements may be performance-based and may be chargeable to a benefiting cost category based upon a documented cost analysis, as discussed above, the services provided, and whether the agreement is for tuition or for a commercially available training package, as discussed in connection with § 627.440.

Section 627.420(g) which reiterates the requirement found in section 164(a)(3)(I) of the Act that procurement transactions between units of State or local government or entities organized principally as the administrative entity for SDA's or SSG's, shall be on a cost-reimbursable basis. The final rule now clarifies that cost-plus types of agreements are not allowable (e.g., cost-plus fixed-fee). Based on one comment, language is added concerning the payment of tuition and/or entrance fees to schools that are part of a governmental entity. The specific instances under which tuition and entrance fees may be paid, without breaking them down to their specific cost elements, are listed.

Several commenters addressed § 627.420(h), which establishes the requirement that recipient and subrecipient procurements clearly specify deliverables and the basis for payment, and include specified clauses. A few comments were received questioning the example that was given in the preamble to the interim final regulations of withholding final payment to an OJT contractor until the participant has been retained on the job for a specified period of time after the completion of training. The commenters wondered if the Department has predetermined deliverables for OJT. The discussion was intended merely as an example and does not set a hard and fast rule for OJT contracts, although the Department sees that such a contract provision might facilitate retention upon completion of OJT.

In the final regulations, paragraph (h)(2) on required clauses is revised, to break it into three paragraphs: clauses required for subrecipient awards; vendor awards; and vendor and subrecipient awards. In response to concerns expressed, the applicability of clauses such as copyright and rights in data is narrowed. Several commenters correctly pointed out that the regulations did not specify what the patent, copyright and rights and data clauses should be. The final rule is amended to remove the requirement for patent rights (since it is not expected that many patentable items will be developed using JTPA funds) and to include additional information on copyright and rights in data clauses. In the case of the copyrights clause requirement, the application of this clause is limited to those awards which involve the use or development of copyrighted materials. Also, the breach of award and termination clauses are expanded to cover all awards. In the newly designated paragraph (h)(4)(i), which relates to breach of agreements, this clause is now required to be included in all agreements, rather than be limited to those which exceed the small purchase limit. The rationale for this change is that a breach in a small purchase situation can be as damaging to the JTPA program as those in large dollar awards.

Section 627.420(i) establishes the requirement that recipients and subrecipients have written protest procedures. A few comments were submitted on this section. One wondered how paragraph (i)(2), the referral of violations of law, related to TEGL 6–84 and the incident reporting system. This section of the regulations is amended to reference § 627.500(b) of the regulations, which establishes the referral requirements.

Selection of Service Providers

Section 627.422 establishes the requirements for the selection of service providers. One commenter felt that the selection of service providers should be essentially a blind process, in which the specific sector of the provider is

secondary to the provider's demonstrated ability. This is an accurate statement of the general intent of the Amendments and of the Department in developing this section of the regulations. Given the large amount of funds that are budgeted for JTPA titles II and III, it is important to ensure that procurements are done in a manner that will not only promote the integrity of the process and the efficient expenditure of the monies but will also allow organizations an opportunity to fairly compete to provide these services. Although it may be administratively easier to sole source the bulk of the JTPA monies, this not only is unfair to the other potential service providers in a specific geographic area, but it also could result in a diminution of the number of organizations that are able to provide services to the JTPA system as well as in an increase of costs due to the lack of competition.

One commenter correctly pointed out that the first sentence of § 627.422(b) was missing a reference to recipients and subrecipients. The final rule is amended accordingly. A small number of commenters wondered why the regulations call for the Governor to establish guidelines on the selection of service providers, when the Act calls for the Secretary to establish guidelines. The Secretary has established minimum guidelines through these regulations. The Governor is given the authority to expand on these guidelines.

Section 627.422(c) establishes the requirement that when a State, SDA, SSG, or administrative entity determines that it will provide services, it must first make a determination, in writing, under the standards of § 627.422(d), of the demonstrated performance of its staff. A number of commenters expressed concern that this section went beyond the intent of the Congress.

A number of commenters argued that the "self-determination" requirement is inappropriate because it infringes on the rights of PIC's or SDA's to make their own decisions on the mix of services according to local considerations. The self-determination requirement implements the requirements of sections 107 (a) and (e) and 164(a)(3)(A) of the Act for competitive selection of service providers. These requirements do reduce local discretion to the extent that they prevent any SDA/SSG from selecting its service providers without adherence to the rules of a competitive selection process. An SDA/SSG may not select an "independent" service provider without adhering to the competitive procurement rules which is as much an intrusion on its discretion as is the requirement that it justify its selection of an in-house service provider.

The purpose of the Act's new emphasis on competition in the procurement process is to ensure that the JTPA program provides the best available services at the most advantageous price. This rationale is equally applicable no matter what the identity of the service provider. Obtaining services through a competitive selection process enables decisionmakers to periodically review the quality of, necessity for, and cost of the services that are being used. It would defeat the purpose of the competitive selection process if one kind of service or one kind of service provider were exempted from this periodic review. Thus, it is critical to the integrity of the competitive selection process that the selection of all service providers, including in-house providers, be subject to periodic review and to regular redetermination of the quality and cost effectiveness of the services provided as well as their responsiveness to the needs of the participants. For this reason, the Department has decided to retain the self-determination requirement in the final rule.

Other commenters thought that this requirement was not needed since the sanctions that occur for failure to meet performance standards provide all the protection needed against arbitrary decisions to perform services in-house. It is true that these available sanctions will help lead to a better program, but the earliest that they will lead to the increased full and open competition required by the Amendments is after two or three years when performance standards are not met and the sanctions are imposed. Since it is the Department's intent to increase competition immediately, it is appropriate to impose the self-determination requirement.

The comments revealed some confusion over the types of services that would be covered by the requirement of paragraph (c). Several commenters indicated that intake and assessment should not be included as services that should be competitively procured. Covered services, in the final regulations, are defined to exclude intake and eligibility determination, which are services that are the basic responsibility of SDA's/SSG's.

Another concern expressed was that a vote by a PIC to provide an activity in-house will require the PIC to vote on a matter that will directly benefit the JTPA agency. Since the enactment of JTPA and the formation of PIC's, PIC's have had to make decisions and vote on the provision of services internally. This may well be an apparent conflict of interest, but the conflict is inherent in the role of the PIC, and it is a conflict whether or not the SDA is required to justify the decision.

Further, if the requirement for self-determination had not been established in the regulations, States, SDA's, SSG's, and administrative entities for SDA's and SSG's would be required to compete all of the services. It is not the Department's intent to require recipients and subrecipients to go through a full fledged competitive process or to impose onerous procedural requirements, but merely to assure that they periodically consider whether the methods by which the services are provided meet the Act's standards for cost and quality. For States, SDA's and SSG's that have already been running programs in-house, the determination to keep services in-house will be relatively easy. The determination will be more involved for SDA's and SSG's that propose to conduct services and activities which have traditionally been contracted out and should have a rationale for so doing.

Some commenters provided reasons why they provided services in-house. These reasons included avoiding brokerage fees for OJT development and providing backup capacity if contractors fail. Both these reasons for performing these services in-house are legitimate ones, which should suffice as part of the justification required by this requirement.

Some commenters wondered where the self-determination of demonstrated performance should be documented. Since it is not expected that the documentation be voluminous, the Department believes that it would be appropriate for recipient and subrecipient administrators to address the criteria listed in paragraph (d) in writing, in the JTP, GCSSP or EDWAA plan. In the case of the requirement of paragraph (d)(2) that the service provider possess, "[t]he ability to meet the program design specifications at a reasonable cost," recipients and subrecipients need not undertake extensive cost comparisons.

Section 627.422(d) implements the requirement in section 107(a) of the Act that the Secretary develop guidelines on determining demonstrated performance. Concern was also expressed that use of CBO's might be restricted by the requirement in paragraph (d)(1) that service providers have adequate financial resources or the ability to obtain them. Comments indicated that many CBO's only support is JTPA programs and their financial stability

rests with their ability to win JTPA contracts. Where the reimbursement method is used, the entity must either have the financial resources to cover expenses until reimbursed, or must be able to obtain the financial resources through loans, etc. In the case of CBO's, many will be placed on an advance method of payment. As a result, the financial resources test is considerably less stringent. Awarding agencies should, however, check the financial stability of all organizations in order to determine that they possess the financial wherewithal to adequately undertake a JTPA program and whether they are on the verge of bankruptcy.

Section 627.422 (e) and (f) reiterate the language of section 107 (a) and (c) of the Act concerning CBO's and educational institutions. These provisions must be interpreted in conjunction with the goal of the regulations to establish an "even playing field." CBO's and educational institutions are to be provided copies of any RFP's, etc. Any proposals that are received from CBO's and educational institutions are to be reviewed and rated in the same manner as proposals from any other organizations. It must be noted that the 90/10 arrangements authorized for use with CBO's or non-profits are not to be taken into consideration in the rating criteria. Based on the special mention in the Act of CBO's, it would be appropriate in instances where competing proposals are rated the same, to use as a tie-breaker the status of the organization submitting the proposal (i.e., CBO). In the case of educational institutions that are providing education services, the language in the Act is more prescriptive. Therefore, in the case of a tie, the award must go to the educational institution, unless the organization does not pass the demonstrated performance test. Further, paragraph (e) is clarified in the final rule so that it is easier to read.

Some questions were raised concerning instances where Statewide procurement policies call for awarding extra points to proposals received from such organizations as minority-business enterprises and women-owned businesses. If this is a State, SDA or SSG-wide policy, applicable to not only JTPA funds but other funds, the State, SDA or SSG may continue applying these policies to JTPA funds. If these policies apply only to JTPA funds, States, SDA's or SSG's may not continue applying these policies to JTPA funds. This is discussed in a new paragraph (l).

Section 627.422(h) is redesignated as § 627.422(k) and reiterates the Act's requirement that awards include appropriate amounts necessary for administration and supportive services (section 108(b)(5)). Several commenters felt that SDA's/SSG's should be allowed to continue making awards that do not include administrative funds. It is because of this practice that new language was included in the Amendments. In the past SDA's have indicated that, given the 15 percent limitation on administrative costs, they do not receive sufficient administrative funds to operate JTPA programs. It is equally difficult for other service providers to provide these same services when they are provided either an even lower level of or no administrative funds. Some commenters thought that the regulations, as written, will give service deliverers the right to claim whatever administrative costs they want. This is not the intent of the regulation. While the regulation does prevent an SDA from arbitrarily refusing to fund a service provider's administrative costs or from arbitrarily underfunding them, it creates no right in the service provider to demand any particular level or amount of administrative funding. The level of administrative funding to be covered by the agreement should be determined through negotiations. If either party is dissatisfied with the results of the negotiations, they should not sign the agreement. Such disagreements may be handled under State and local grievance procedures. Some commenters were concerned that awardees that fail to perform would argue that insufficient administrative funds were provided and, thus, were the cause of the failure. Because the agreement should be mutual, it should be difficult for an awardee to use this argument to excuse lack of performance. The Department does wish to note that it is inappropriate for the SDA to pre-determine that it will not provide administrative costs for awardees except in the payment of tuition or off-the-shelf prices. Others requested that guidance be given on how to determine appropriate amounts of administrative funds. The Department thinks this type of clarification is more appropriately provided at the State level.

No comments were received on paragraphs 627.422 (i) and (k). These two paragraphs are redesignated as (h) and (j), respectively.

The redesignated § 627.422(j) (now § 627.422(i)), which references back to section 204(d)(2)(B) of the Act, deals with the selection of subrecipients for the provision of services to older workers. One commenter thought that this section provides the justification for sole-sourcing older worker programs at the State level. This is not the Department's intent. These programs are to be competed just like any other program. Others thought that only the Governor has the responsibility for selecting service providers. With the addition of the pass-through provision (at § 627.420(d)(2)), this does not have to be the case since the Governor can delegate his/her authority for selection through the pass-through process.

Funding Restrictions for "High-Risk" Recipients and Subrecipients

A number of comments were submitted on § 627.423. Several of the commenters thought that this section was in conflict with § 627.422(d), which requires a determination of demonstrated performance. The intent of this section is not to give preferential status to high-risk recipients and subrecipients, but to provide JTPA entities with the authority to impose funding restrictions should it be necessary to contract with such an entity. There may be instances when awarding agencies have to make subrecipient awards to high-risk organizations because they are the only entity providing the required service. By including this section, awarding entities may do so, but are authorized to include restrictions on the award in order to protect the Federal funds.

Other commenters thought that the regulations, as written, would give high-risk grantees an argument that they have a right to be considered and selected. This is not the case. This section does not confer a right of selection to high-risk organizations. Given the choice of comparable proposals from an offeror who has demonstrated performance and a high-risk recipient/subrecipient, the award should be made to the former, unless other factors indicate otherwise. Additional language is added to § 627.422(d) to clarify these points. Finally, editorial changes are made to clarify that this section applies to all awards, not just grants or subgrants.

Prohibition of Subawards to Debarred and Suspended Parties

Section 627.424 applies the Federal government-wide requirements on awards to debarred or suspended parties contained in Executive Orders 12549 and 12689 and implemented for all Department of Labor grant programs in regulations codified at 29 CFR part 98. These requirements were previously issued to JTPA Liaisons in a Grant Officer Notice dated April 30, 1992. As provided in 29 CFR part 98, certifications are not required for the State legislatively required "pass-through" of JTPA funds to SDA's/SSG's since these are considered "mandatory

awards" and are, therefore, exempt from the 29 CFR part 98 requirements. However, any other subaward over $25,000, such as an SDA award with a service provider, must meet the "lower-tier" certification. These "lower-tier" certifications are to remain with the respective awarding agency.

One commenter requested that language be added to this section that tells States and subtier grantees that they may elect to subscribe to the List of Parties Excluded from Procurement or Non-Procurement Programs. This has not been done, since nothing in these regulations prohibits JTPA entities from subscribing to this publication, and using it as a resource.

Financial Management Systems and Generally Accepted Accounting Principles (GAAP)

Section 627.425(b) of the interim final rule requires financial systems and procedures of recipients and subrecipients to be in accordance with GAAP and § 627.435(a) requires costs charged to the JTPA program to also be in accordance with GAAP.

Several commenters raised questions or issues about GAAP, including requesting that the Department be more specific about how GAAP must be applied by States and SDAs, requesting specification of which GAAP to use, and, if GAAP is to be determined by the Governor, if the Governor can waive GAAP provisions. A few commenters requested that the statutory language of section 164(a)(1) of the Act pertaining to GAAP applicable in each State be included in § 627.425(b).

Language is added to § 627.425(b) to provide for the applicability of GAAP in each State. The Department recognizes that GAAP vary by type of organization or entity and that, while there is great similarity among them, multiple versions of GAAP exist for each type of entity. It is the Department's intent, by adding this language, in addition to the language in paragraph (a) of § 627.435, to allow the Governor to determine which specific versions of GAAP are to be used in each State and by which types of entities, should this be at issue in any State. It is not intended to give the Governor authority to waive GAAP provisions since the Act requires the use of GAAP.

The word "liabilities" is added to the list of financial information that financial systems must include at § 627.425(b)(1)(i). The inclusion of this term is to make the listed items parallel.

A few commenters indicated that revised financial reporting requirements need to be issued by the Department, consistent with § 627.455, so that changes to accounting and other financial systems could be made that also meet the reporting requirements. Revised financial reporting requirements for JTPA title II programs were issued by the Department in Training and Employment Information Notice (TEIN) No. 6–93 dated July 30, 1993 (OMB No. 1205–0323). Revised financial reporting requirements for title III programs were issued by the Department in TEIN's Nos. 14–93 and 12–93, dated August 30, 1993, and September 8, 1993, respectively (OMB Nos. 1205–0326 and 1205–0318).

In regard to participant data systems, a few commenters sought clarification regarding eligible applicants for whom information must be maintained under § 627.425(c). As used in the regulation, a "formal" determination of eligibility refers to a situation in which sufficient information has been obtained by the program for a staff person to make a determination of eligibility. The Department expects that such a determination will be made within a reasonable time after the information is obtained.

Grant Payments

Section 627.430 establishes standards by which the Department will make payments to States as well as standards for States, SDA's, SSG's, and other subrecipients for making payments to lower tier subrecipients. Included within this section are standards for when advances to subrecipients are appropriate, when the reimbursement method is appropriate, and provision is made for using the working capital advance payment method.

A number of commenters addressed the provisions of this section. A few commenters raised concerns related to the Cash Management Improvement Act (CMIA) and primarily suggested that the Department should delay CMIA requirements since SDA's/SSG's are waiting on the Department to publish CMIA standards. One commenter pointed out that at the current time, the Treasury Department regulations at 31 CFR part 205 do not go beyond the State level.

CMIA applies only to States and does not carry through to subrecipients that are not a part of the State government. The Treasury Department published final regulations to implement CMIA at 31 CFR Part 205 on September 24, 1992. The Department does not plan to publish any additional CMIA standards applicable to grant funds.

The Department recognizes that the September 24, 1992, Treasury Department regulations dropped the requirements that previously existed pertaining to subrecipients of States as well as non-State recipients. Therefore, the basic cash management standard of paragraph (b) of this section is revised to incorporate the standard that is generally applicable to other Federal grant programs. That standard is also generally consistent with the standard applicable to the JTPA program prior to the publication of the interim final rule. In addition, the requirement to maintain procedures as a part of the standard is deleted so that the standard is based only on the demonstration of effective cash management results.

A few commenters raised questions of whether subrecipients other than CBO's and non-profit entities could receive advances or working capital advances. A few commenters wanted clarification on the specific requirements for payments to contractors. It is the intent of this section to provide for advances to any subrecipient as long as the subrecipient is in compliance with the basic cash management requirement that cash on hand shall be limited to actual immediate disbursement needs for program purposes. A subrecipient that does not meet that standard may be paid by either of the other two payment methods outlined in this section. The Department recognizes that, given the definitions in § 626.5 for subrecipient and contractor and the procurement requirements of the Act and these regulations, there is no need to establish separate payment requirements applicable to contractors. Therefore, paragraph (b)(2) of the interim final rule is removed from the final rule and corresponding language adjustments are made throughout the remainder of this section.

A few commenters requested clarification of the requirement, in paragraph (f) of this section, which requires disbursement of cash received as a result of program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments in light of the time frame for the use of program income at § 627.450, Program income. The requirement in § 627.430(f) is a cash management requirement to ensure that cash attributable to JTPA does not remain in a bank account while at the same time the entity is drawing additional cash from the Treasury Department to meet immediate JTPA disbursement needs. Any cash attributable to JTPA should be immediately disbursed for whatever JTPA disbursement need exists. That need does not have to be the same as the entity's planned use of program income earnings nor does it relieve the entity of its liability to provide, within the

funding period, an amount of program services equivalent to the amount of program income earned. At the time cash is needed for disbursement for the purposes for which the program income was planned to be used, it can be accessed through normal JTPA grant payment processes. Language is added to paragraph (f) of § 627.430 to more clearly apply this requirement to cash proceeds.

Cost Principles and Selected Items of Cost

Section 627.435 provides generic cost principles applicable to the JTPA program in paragraphs (a) through (d) and provides specific treatment for selected items of cost in paragraphs (e) through (h). A few commenters stated that the Department should adopt the Circulars for cost principles, thereby replacing this section.

Section 164(a)(2) of the Act requires the Secretary to prescribe regulations establishing uniform cost principles substantially equivalent to those generally applicable to recipients of Federal grant funds. The generic cost principles in this section are intended to be substantially the same as the provisions of Attachment A of the OMB Circulars that contain cost principles and should generally be interpreted the same as the Circulars. The Department has chosen not to simply adopt the Circulars because they contain some restrictive requirements in areas where the Department thinks that recipients and subrecipients should retain operational flexibility.

A number of commenters recommended that the prohibition on the shifting of funds in § 627.435(c) should be changed to clarify that it does not cover accounting errors. The Department agrees with this comment and language is added to limit this prohibition to costs "allocable" to another Federal grant, program, or category. Adjustments should be made for costs inappropriately charged because of accounting errors or misclassification so that the costs ultimately charged to a cost objective are those properly allocable to that objective.

A few commenters requested revision of the prohibition on contributions to contingency reserves at § 627.435(e)(6), particularly that they should be allowable if such contributions are not made with Federal funds. The language on contingency reserves is not changed since only those costs charged to the JTPA program are regulated by this section and it does not extend to non-JTPA funds.

Amended § 627.435(f) provides additional guidance on legal costs. A number of commenters recommended changes in this area, with most commenters opposed to the specific prohibition on the allowability of costs for appeals to an Administrative Law Judge. Several commenters suggested that the Department should review the Conference Report language on this issue. A few commenters requested more specificity on legal expenses, particularly settlement costs.

In response to the comments received on the specific prohibition on the allowability of legal costs for appeals to an Administrative Law Judge, the Department has reviewed the Conference Report (H.R. Conf. Rep. No. 102–811, 102d Cong., 2d Sess., p. 137 (1992)) and engaged in further dialogue on this subject. The discussion in section 221 of the Conference Report pertained to title IV special programs for Migrants and Seasonal Farmworkers and the Department does not view that language as carrying through to the other titles of JTPA. The Department is also aware that some Federal agencies are permitting the costs of appeals to an ALJ as an allowable grant cost. The Department notes that, unlike the process of the Department of Health and Human Services that is referred to in the Conference Report, there are several opportunities for informal resolution of disputes prior to the issuance of the Department of Labor grant officer's final determination. In addition, if the grant officer's decision is found, upon appeal, to be substantially in error, there may be an opportunity for a grantee to recover its legal costs under the provisions of the Equal Access to Justice Act. Congress, in passing the Equal Access to Justice Act, has set forth the conditions under which it is appropriate for parties in contested administrative proceedings to recover their costs from the federal government. The rule that is adopted in these regulations maintains those conditions. Finally, it is the Department's position that, absent any specific statutory direction, Federal taxpayers should not bear the costs of both sides of a matter appealed to an ALJ. To do so may increase the incidence of such costs and provides no incentive for assuring that only matters of substantive merit are appealed.

With regard to the language on settlement costs, paragraph (f)(1) of this section is changed to clarify that settlement costs are allowable to the extent that the costs included in the settlement would have been allowable if charged to the JTPA program at the time they were incurred, e.g., if the settlement costs are for back pay then the provisions of § 627.435(e)(2) would control the allowability of the settlement costs.

Section 627.435(h) of the interim final rule basically continued the language on construction costs that has existed since the inception of JTPA. However, a few commenters recommended changes to this paragraph including that construction costs for alterations, maintenance, and repairs should be allowable and that there is now a conflict with amended § 627.210(a)(3) concerning physical accessibility, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

The Department agrees with these comments and the language on construction costs is eliminated. The effect of this change is to allow construction costs to the extent that such costs are necessary and allocable to JTPA. Paragraph (h) of the final rule now contains language on contributions to a reserve for self-insurance, as discussed above in the discussion of § 627.415(c), Insurance.

Governor's Guidelines on Allowable Costs

Section 627.435(i) requires the Governor to prescribe and implement guidelines on allowable costs not otherwise treated in § 627.435 and contains a listing of selected items of costs in paragraph (i) for which the Governor's allowable cost guidelines must, at a minimum, prescribe treatment.

Many commenters responded to the provisions of this subsection. Most of them saw it as a requirement for Governors to set actual amounts for salaries and other commonly incurred JTPA costs and opposed this subsection. One commenter recommended that the Department should clarify the intent of this provision and a few commenters asked whether the requirements of the regulation would be met if the OMB Circulars on cost principles were adopted.

This provision is not basically different from the requirement, in existence since the beginning of JTPA in 1983, that "[t]he Governor shall issue guidelines on allowable costs for * * *." Such guidelines should set parameters and guidance, rather than actual amounts. The Department's intent is simply to ensure that the Governor's guidelines cover at least the items included in the list, since issues have been raised on each of these items during the past 10 years of JTPA. Recognizing that SDA's retain some flexibility, within the Governor's

guidelines, to establish amounts for allowable costs such as personnel compensation and travel, the final rule is changed by replacing the words "and amounts" with "or the extent of allowability." In addition, since other sections of the final rule now provide guidelines on item No. 11, the extent of allowability for supportive services costs and payments to participants, that item is removed from the list in this section of the final rule.

For most States, the existing allowable cost guidelines of the Governor already meet the requirements of this paragraph and few, if any, changes are necessary. All States should review their current allowable cost guidelines and ensure that each of the 16 listed cost items are treated consistently, as well as any other cost items for which the Governor thinks consistent treatment is necessary. A commenter raised the question about whether the regulatory requirement would be met if the OMB Circulars on Cost Principles were adopted. The Department agrees that all 16 cost items would be covered if the Circulars were adopted. The Department cautions, however, that: (1) It does not intend to approve or disapprove any prior approval requests, as required by the Circulars, and (2) the OMB Circulars contain restrictive requirements in areas in which States, SDA's, and SSG's may desire greater flexibility, e.g., staff compensation, fees/profits, fund-raising.

Administrative Cost Pools

Section 627.440(a) is amended in the final rule to add language on cost pools. Section 627.440(f) of the interim final rule required that costs charged initially to a JTPA administrative cost pool (ACP) be allocated, for JTPA Federal reporting purposes, to the benefitting programs based on the benefits received by each program. The Department recognized that this language represented a departure from previously established policy on the manner in which pooled administrative costs could be reported. Commenters were requested to identify the impact, if any, of the revised requirement to allocate pooled administrative costs solely on the basis of "benefits received".

Many commenters responded to the provisions of this paragraph. Most of the responses fell into one of three groups. One group viewed the ACP language as effectively prohibiting ACP's by requiring detailed time distribution or some type of cost allocation process for each item of joint administrative cost. These commenters thought the new requirements involved too much recordkeeping, were an unreasonable burden, inefficient, illogical, and went beyond the requirements of OMB Circular A–87.

A second group expressed concerns about the effect of the ACP requirement on the administrative cost limitations for each program and that they would lose their ability to ensure cost limits are not exceeded. They were also concerned programs would be overexpended. A few commenters stated that there are not enough administrative funds available for EDWAA at the State level to absorb its share of costs.

The third group of commenters made suggestions that included going back to the old regulatory language, which allowed "true cost pools", specifying that using direct expenditures was an acceptable methodology, and requiring application of A–87 principles. One commenter suggested eliminating any mention of ACP's in the regulations and, instead, requiring JTPA entities to follow GAAP and section 108(a) of the Act. In addition, a few commenters requested guidance on the use of intake cost pools. Several commenters raised questions about the proper charging of title II–B administrative costs at the State level.

Several commenters also raised questions about the "benefits received" language of paragraph (a) in § 627.440, which requires all JTPA costs to be charged to the benefitting programs and cost categories based on benefits received. That language has been a part of the JTPA regulations since the inception of the program. A few commenters recommended that this paragraph should specifically allow cost pools.

The ACP language contained in § 627.440(f) of the interim final rule was not intended to eliminate the use of "true cost pools" in accounting for the costs of JTPA programs. It was also not intended to go beyond the requirements of section 108(a) of the Act, GAAP, paragraph (a) of this section or similar provisions in OMB Circular A–87. The final rule removes the specific ACP provisions in paragraph (f) and adds a new sentence on cost pools within paragraph (a). The new sentence is intended to be consistent with the A–87 meaning and treatment of cost pools.

JTPA entities may continue to use ACP's. They may also continue to use indirect cost pools, training cost pools, intake cost pools, pools for supplies expense, and any other pool they find beneficial to have in their accounting system, including intermediate cost pools for the recording and temporary accumulation of joint or similar types of costs, pending distribution (allocation) at a later date to the benefitting cost objectives, e.g., programs and/or JTPA cost categories.

Having, or using, a JTPA ACP has never been an issue and is not one now. The issue is how to distribute or allocate those accumulated costs back to the benefitting programs and whether allocation methodologies other than "benefits received" by each of the benefitting programs can be used. The "old" JTPA regulations did not address this issue. Since the 1992 Amendments directly incorporate the requirement to follow GAAP, and GAAP requires costs to be charged based on "benefits received," the basic issue is whether the Department can waive a specific statutory requirement, especially when it affects up to 20 percent of the funds.

It is the Department's experience that allocation based on "benefits received" has not added much workload burden and alternative methodologies have been developed by most JTPA entities. For many JTPA entities, allocating administrative costs based on each program's share of total direct costs, salaries and fringe benefits, or total program costs compared to the total direct costs, total salaries and fringe benefits, or total costs of all programs administered by an entity are acceptable methodologies. The Department cautions, however, that some of these methodologies may not be acceptable for particular JTPA entities. Each organization is different and costs, particularly direct costs, are charged differently. It will require a self-examination by each entity to determine the best approach. Assistance can also be obtained from the State's or SDA's auditor. The use of financial-based methodologies is encouraged; however, the Department will accept any treatment of pooled costs and allocation methodologies that are consistent with GAAP applicable in each State. The Department cautions that a methodology that is based solely on contribution to the pool may be questioned in audits.

Finally, in response to the questions about the proper charging of title II–B administrative costs at the State level, § 627.440(b) establishes the JTPA cost objectives for State-administered programs and the State's overall administration of title II activities. To clarify this issue, however, § 627.440(b)(10) is revised in the final rule to specifically include State administrative costs associated with title II–B.

Classification of Costs

Section 627.440 establishes the minimum levels of accountability for JTPA funds, provides the Secretary's definitions of the cost categories, and

provides specific treatment for the classification of certain types of costs that have frequently been at issue in the JTPA system.

At § 627.440(c)(2), the regulations provide that incentive funds, both title II–A and II–C, received by an SDA may be combined and used without regard to cost categories or cost limitations. A number of commenters on this provision were pleased with the treatment accorded incentive funds, however, several commenters appeared to have missed or misread this provision. No change is made to the final rule.

Within the definitions of the JTPA cost categories, at § 627.440(d), a number of comments expressed concern about the treatment of tuition, work experience wages, insurance, and the difference between public information costs and the costs of outreach. Another frequent comment concerned the treatment of project directors and other positions that perform both administrative and program functions. Commenters on this subject fell into two groups. One group, which appeared to have missed the provisions of paragraph (e)(1), argued that the costs of such positions should not all be charged to administration. Some requested that such positions be charged entirely to training. The other group, focusing on paragraph (e)(1), commented on the burden and mechanics of time distribution.

The Department agrees that the language in the preamble of the interim final rule concerning tuition was somewhat inconsistent and more restrictive than this section of the regulations. The Department's intent is to permit costs frequently associated with tuition costs, such as entrance fees, to also be charged to the direct training category. The Department believes that the regulation adequately expresses this intent. In addition, tuition, entrance fees, and other usual and customary fees of other educational institutions, such as postsecondary vocational institutions specified at section 481(c) of the Higher Education Act, are another example of payments to vendors that are appropriately charged to the direct training category. The final rule removes the reference to section 141(d)(3)(B) of the Act to clarify that such payments to any educational institution in a vendor relationship that also satisfies the other criteria of paragraph (d)(1)(vi)(B), are direct training costs.

Where tuition is part of a subrecipient agreement, rather than a vendor relationship, and the agreement also includes other components, the costs of tuition are chargeable to the direct training category.

A new paragraph (d)(1)(vii) is added to the final rule specifying that payments to participants that represent hours spent in a direct training activity (such as work experience) are direct training costs. In addition, the word "insurance" is removed from the definition of administration since this is a type of cost that should be charged or allocated to each of the benefitting categories.

Some commenters raised the question of how the costs of curriculum development or training materials should be charged. The Department believes that these costs are properly charged to the direct training cost category.

A few comments were received on public relations costs versus the costs of outreach. These comments tended to view public relations as an outreach cost and recommended that it be charged to the training related and supportive services category. The Department agrees that public relations can be an effective tool that enhances outreach activity, but also believes that the costs of general public relations is more appropriately a part of the overall costs of administration. No change is made in the final rule.

The Department also agrees with commenters that time distribution should be reasonable and not burdensome and that alternative distribution bases should be allowable. Language is added to paragraphs (d)(1)(i), (d)(3)(i), and (e)(1) to provide that other equitable cost allocation methods may be used. Other equitable cost allocation methods may be either financial based or non-financial based methods.

Limitations on Certain Costs

Section 627.445(d) of the interim final rule clarified the provision made in section 141(d)(3)(C) of the Act for excluding administrative costs incurred by CBO's or non-profit organizations from the SDA's administrative cost limitation under certain criteria and conditions specified in the Amendments. A number of commenters responded to that provision and regulatory clarification. Most of these commenters incorrectly perceived the 10-percent limitation as an absolute ceiling on administrative costs for CBO's and other non-profit service providers and requested relief from that ceiling. Other commenters raised questions of whether the 90/10 provisions were based on budget or actual expenditures and the effect on the 90/10 provision if more than 10 percent is expended by the CBO or other non-profit service provider for administrative costs.

The Department emphasizes that the provisions of section 141(d)(3)(C) of the Act and paragraph (d) of the regulations do not constitute a mandatory ceiling on administrative costs for CBO's and other non-profit service providers. The relief provisions apply to the SDA's administrative cost limitation and are only applicable for those situations in which the SDA and the CBO or other non-profit service provider agree to the 90/10 arrangement. Where such agreement is reached, the SDA may avail itself of the relief to total administrative costs only if the actual expenditures of the CBO or other non-profit service provider conforms to the 90/10 provisions. Costs charged to the JTPA program for the costs of a CBO or other non-profit service provider that are for less than 90 percent for direct training and training-related and supportive services costs or for more than 10 percent for administrative costs negate the applicability of this provision.

No changes other than grammar and deletion of the word "private" are made to this section.

Program Income

Section 627.450 contains a definition of what is and what is not program income for JTPA purposes, including the incorporation of the new provisions of section 141(m) of the Act, and establishes timeframes and requirements for the treatment and use of program income. The JTPA cost categories and the administrative cost limitations are also made applicable to program income.

A number of commenters responded to the provisions of this section. The comments contained a number of suggestions, including: That the Department should adopt the OMB Circular A–102 definition of program income; that program income should not be subject to the cost categories or administrative cost limitation; and that the regulations should eliminate the presumption that a contractor is entitled to the earned revenues by law, especially a contractor with whom the State or SDA is no longer contracting. Other commenters raised the question of whether earned program income must be used for the same program or subtitle that earned it and still others requested clarification of the time frame for use of program income.

It is the Department's intent to adopt the basic A–102 definition of program income and to add to that definition the specific provisions of section 141(m) of

the Act. In addition, the Department recognizes that the potential to earn significant amounts of program income exists within the Act and these regulations. To avoid the possibility of creating windfalls of administrative funds available to entities that choose to use the new provisions in such a manner, the Department is imposing the administrative cost limitation on program income.

Section 141(m) of the Act specifies that program income may be retained by the entity that earned it and used for program purposes. The Department believes that the regulations, as written, are consistent with the statutory provision and that there is no authority to empower any other entity to use the funds, as long as the entity that earned the program income uses the funds for program purposes.

In response to the questions about whether program income must be used for the same program or subtitle that earned it, or if it may be used for any JTPA program or title, the Department agrees that clarification is needed. While the interim final regulations limited the use of program income to the particular JTPA grant or subgrant under which it was earned, it is recognized that particular grants or subgrants may provide funds for multiple programs or subtitles. Therefore, paragraph (c) of this section of the final rule is amended to also limit its use to the JTPA title under which it was earned. In addition, language is added to paragraph (c)(3) to clarify that the time period for the use of program income is the funding period, usually up to three years.

It was brought to the Department's attention that section 141(m) of the Act does not exempt interest earnings by States from the provisions applicable to income under the Act and, therefore, the regulations could not either. The Department agrees, however, the State is required by the CMIA, codified at 31 U.S.C. 6503(c), to pay interest on advanced funds from the time that the funds are deposited by the United States to the State's account until the time that the funds are paid out by the State for program purposes.

The Department believes that it is equitable that the State be able to use the interest it may earn on these funds towards satisfying the interest debt created by the CMIA and does not desire to cause States to both meet any interest liability under the CMIA and provide additional JTPA program services with the same interest earnings. Therefore, paragraph (a)(v) is revised in the final rule to eliminate the exception for interest earnings by States and paragraph (c), Use of program income, is revised to permit the State's use of such income to meet its CMIA liability. In addition, the application of the administrative cost limitations in paragraph (c) is also revised to exempt program income used by States to meet its CMIA liability from the administrative cost limitation.

Reports Required

Section 627.455 requires financial reporting to be on a quarterly basis and costs to be reported on an accrual basis by year of appropriation. A few commenters asked whether participants must also be reported by year of appropriation and several commenters asked whether costs may be charged to the oldest available appropriation, i.e., first-in, first-out (FIFO) basis.

As specified in § 627.455(a), reporting instructions are to be issued by the Secretary. The statutory requirement to report by year of appropriation is limited to financial data. With regard to FIFOing of costs, the Department has no objections to an entity FIFOing costs it incurs itself as long as obligational authority exists for multiple years and the costs are for the same purposes and under the same terms and conditions that accompanied each year's obligational authority. This approach limits FIFOing to each individual JTPA entity and does not include one entity FIFOing costs incurred by another entity, even if the other entity is a subrecipient of the original one. Restated, once a JTPA cost is recorded by any subrecipient, it must be recorded against a given year of funds and remains a cost charged to that year of funds. It may not be recorded or reported by another entity against a different year of funds. No changes are made to the final rule.

Requirements for Records

Section 627.460(a) imposes the record retention requirements of section 165(e) of the Act on State records and provides the State two options for subrecipient records. A few commenters encouraged the Department to drop the option for subrecipient records and require all subrecipients to comply with the record retention provisions imposed on subrecipients by the Act.

Since the Act is unclear about its effect on subrecipient records, it is the Department's intent, by providing an option for retention of subrecipient records, to allow each State to determine if subrecipients of the State should each have its own clock for the starting point for record retention, rather than having all records of all subrecipients throughout a State controlled by the one State clock. This option avoids requiring all subrecipients in a State to maintain records beyond the prescribed period just because a claim, audit, or litigation has started that affects only one or a few subrecipients. It also enables JTPA subrecipients to maintain and dispose of JTPA records in the same timeframes that apply to other records of the subrecipient that are covered by applicable OMB Circulars. It is expected that either approach will result in most JTPA records, other than property records, being maintained for the same total 5-year period of time. Subrecipients that are opposed to this approach should encourage their State to not adopt the option provided.

Paragraph (a)(2) of this section is changed in the final rule to add the statutory requirement for property records to be retained for three years after final disposition.

Section 627.460(d) of the interim final regulations authorizes the substitution of copies made by microfilming for original records. A few commenters raised questions about the allowability of retaining records in forms other than microfilming, such as computer imaging or scanning, and other types of computer generated data and electronic files. In response to these comments, the Department has revised this provision. Instead of authorizing a particular medium for record retention, the revised provision sets a standard that the method of retention must be sufficient to assure that the record is useable as evidence in an audit or any other JTPA proceeding. As before, the substitution of microfilmed or photocopied records can continue to be used since these media are generally accepted as admissible for evidentiary purposes. The Department takes no position on the use of records stored on electronic media and the revised regulation neither authorizes nor specifically forbids their use. If electronic storage media were to be considered for use, the user would have to be certain that there are sufficient security safeguards and protections against tampering so that a court would accept the record as evidence in a proceeding. As in any case where a record is maintained, the burden of producing and authenticating it is on the custodian of the record and the failure to authenticate the record will lead to the custodian's being unable to use the record for any evidentiary purpose. Thus, if an SDA maintains its participant eligibility records on computer files and is unable to show that the records were secure or were tamperproof, the records could not be

used to prove that participants were eligible for JTPA services.

Public Access to Records

Section 165(a)(4) of the Act requires recipients to make available to the public upon request certain records which are maintained by the recipients pursuant to section 165(a)(1) of the Act. Section 637.463 of the interim final rule was intended to merely reflect the statutory requirement.

A number of comments were received expressing concerns that such disclosure would result in the invasion of personal privacy and would breach basic notions of customer confidentiality. In this same regard, some comments contended that this requirement conflicts with State privacy laws and that the statement in the regulation with this requirement applied "notwithstanding the provisions of state or local law" goes beyond the plain meaning of section 165(a)(4) of the Act. Another comment asked for a definition of the word "clearly" in the term "clearly unwarranted invasion of privacy". One comment questioned the provision in the regulation "excepting" recipient and subrecipient records from the Freedom of Information Act (5 U.S.C. 552). Several comments requested that the regulations place reasonable time and place restrictions on the right of access.

Section 627.463 is revised to follow more closely the statutory language. There is no intent to modify or expand on the plain meaning of the statute.

It is clear that reasonable conditions can be placed on the mechanics of providing access, including time and place restrictions. It is preferable that such management details be developed at the State and local levels and not in these regulations.

The statute and the regulations permit customer confidentiality by excluding from mandatory disclosure information which would constitute a clearly unwarranted invasion of personal privacy. A Federal definition of that phrase is unnecessary since it is a term best defined in local situations by State or local law. A State or local privacy law or requirement which prohibits or restricts the disclosure of information which constitutes an unwarranted invasion of personal privacy would not be in conflict with the JTPA public access requirement. On the other hand, the Act's requirement of public access is a statutory condition to the receipt of grant funds and a conflicting State requirement does not excuse a failure to comply. In other words, if a State or local law applicable to all records exempts certain specific kinds of identifying information (*e.g.*, name, address, social security number or other personal identifying information), it could be applied to restrict the disclosure of some of the information in a JTPA applicant's or participant's file. On the other hand, a State or local law which prohibited disclosure of all employment and training records would sweep so broadly that it would conflict with the Act's disclosure requirement. In order to emphasize that requirement, the informational provision in the regulation that the public access requirement applies "notwithstanding the provision of the State or local law" is retained in the final regulation.

The "informational" statement regarding the Freedom of Information Act produced some confusion and is removed from the final regulation. The only reason this statement was put into the interim final regulation was that the coverage, or non-coverage, of the Federal Freedom of Information Act has been a recurring subject of inquiry. The Freedom of Information Act applies to the disclosure of records in the custody of Federal agencies. In like manner, the Privacy Act (5 U.S.C. 552a) applies to records described in section 165 of the Act. Section 627.460 records are not Federal records until submitted to the Secretary. Until then, they are not covered by federal "freedom of information" or "privacy" requirements.

Property Management Standards

Section 627.465 reflects the requirements of section 141(r) of the Act, which provides that the Federal requirements generally applicable to Federal grants to States and local governments are the requirements governing the title, use, and disposition of real property, equipment, and supplies purchased with JTPA funds.

The Federal requirements generally applicable to Federal grants to States and local governments are codified for Department of Labor grant programs at 29 CFR part 97. Therefore, the provisions of those regulations applicable to property requirements are incorporated into this section for governmental recipients and subrecipients.

The Federal requirements generally applicable to Federal grants to States and local governments provide that subrecipients that are institutions of higher education, hospitals, and other nonprofit organizations will follow the Federal agency regulations that implement OMB Circular A–110, as codified in DOL regulations at 29 CFR part 95 (59 FR 38270 (July 27, 1994), therefore, those requirements are also incorporated into this section for those types of entities. It is expected that this approach will provide administrative relief for such subrecipients since it will prevent an organization administering other Federal grants or subgrants from having to follow two different sets of requirements. In addition, the Federal requirements applicable to intangible personal property have been incorporated into this section.

There are no Federal requirements generally applicable to commercial subrecipients; therefore, § 627.465(c) provides specific JTPA requirements for these organizations.

A small number of commenters raised the question of whether prior approval by the Department of Labor is necessary for property acquisitions. Language is added to paragraphs (a) and (b) of this section to waive any Department of Labor prior approvals relative to property acquisitions.

Section 627.465 specifically provides that the new rules apply only to property acquired after July 1, 1993. Several commenters inquired about the rules applicable to property acquired prior to July 1, 1993. It was the Department's intent in the interim final rule that such property would continue to be governed by the rules in effect at the time the property was acquired. To ensure that this intent is explicit, the previous JTPA regulations on property are added as a new paragraph (e) in the final rule. The only change is the citation for records retention requirements.

The JTPA regulations in effect prior to July 1, 1993, provided that the Governor was to maintain accountability for property in accordance with State procedures, but applied three specific Federal requirements: (1) A reservation of the Secretary's rights to such property; (2) record retention requirements; and (3) either reimbursement to the JTPA program of the fair-market value for any unneeded JTPA acquired property retained for use in a non-JTPA program or the use of proceeds from the sale of such property used for JTPA purposes.

It is recognized that the Department has no rights in property acquired with title II or III funds awarded to States from the inception of JTPA in 1983 through July 1, 1993, but that the Department does have rights in property transferred to JTPA from CETA. Therefore, as long as the proceeds from the sale of JTPA acquired property or the fair-market value of such property transferred to other uses are expended for JTPA purposes and records maintained accordingly, the Department views any further requirements governing such property to be the

responsibility of the Governor. For CETA-acquired property transferred to JTPA, the Department's rights in such property are specified in the current Department regulations implementing the applicable OMB Circulars. Recipients and subrecipients are expected to follow those regulations in disposing of CETA-acquired property.

Performance Standards

In addition to adult and youth programs under title II–A and II–C and dislocated workers under title III, § 627.470 provides for the establishment of performance standards for older worker programs under section 204(d) of the Act. The standards for both adults and youth may include standards for employment competencies which are to be based on such factors as entry-level skills and other hiring requirements. The purpose of the performance standards guidance set forth in these regulations is to establish the general requirements for implementing title II–A, title II–C, and title III performance standards. Specific policy requirements will be developed in consultation with the JTPA system and will be subject to a formal public comment process.

Several commenters asked when the new performance standards requirements would take effect. Current performance standards measures and implementing provisions, as specified in TEGL's 10–89, 7–91, and 11–92, will remain in effect through Program Year (PY) 1993. In accordance with the transition provision of section 701(b) of the JTPA Amendments, revised performance standards were published July 11, 1994 (59 FR 35381 (July 11, 1994); standards pertaining to 6-month retention in unsubsidized employment shall not take effect before July 1, 1995.

In regard to setting 6-month retention standards, several commenters advised the Department to conduct a study to identify and address technical issues related to using Unemployment Insurance (UI) wage records to document placement and retention of participants. In preparation for developing and implementing policy in this regard, the Department of Labor has already undertaken a study to examine the technical and operational issues associated with the use of UI wage records for the purpose of implementing performance standards related to employment retention. The study was conducted in 16 States and focused on such issues as quality of data, timing for incentives, and out-of-State and uncovered employment. The results of the study will be available in the fall of 1994 and will provide important input into the decisionmaking process and guidelines for implementing the 6-month retention standard. The Department recognizes that there will be a variety of issues to be addressed in developing and implementing a retention standard. When the results of the study are available, the Department will work with State and local staff to introduce, wherever feasible, alternative post-program measures.

In addition, it is important to note that interim credit, which a few commenters believed should be incorporated in the performance standards, will be considered in the development process. The Department emphasizes, however, that there is no maximum participation limit and no Department-imposed requirement that everyone be terminated at the end of a given program year. Performance standards are based only on those individuals who do, in fact, terminate.

A number of commenters provided advice on implementing the performance standards required under section 204(d) of the Act, which implies that these standards are to parallel those developed for title II programs. While the specifics of older worker performance standards will not be addressed in the regulations, the process for developing these standards began in the summer of 1993. Program experts and advocate groups for older workers were consulted in developing performance standards for older workers programs.

In addition, in response to other comments recommending adoption of performance standards for adults based on competency attainment, it is important to note that skill acquisition for adults is included among several possible performance standards factors identified in section 106(b)(3)(E) of the Act. In order to insure that any standards established for skill acquisition are fair and practical, the Department has begun to collect relevant administrative data and also to examine experience with youth employment competencies and initiatives, such as the Secretary's Commission on Achieving Necessary Skills (SCANS) and apprenticeship programs. In addition, beginning in 1994 the Department will consult with academics and program practitioners to determine practical approaches to defining adult competencies. Performance standards for adult skill acquisition will be issued in PY 1996, at the earliest.

With the exception of the older worker program, the Governor is responsible for establishing an incentive policy that rewards performance in title II programs and for: (1) Establishing a process for adjusting performance standards to account for local conditions, and (2) providing technical assistance to SDA's which fail to meet performance standards for a given program year.

Several commenters voiced concern that a performance standard relating to costs might be required. Accordingly, § 627.470(c)(2) is amended to clarify that Governors may not tie standards relating gross program expenditures to performance measures in making incentive awards. Governors are encouraged to make full use of available expenditure and participant data in monitoring SDA fiscal practices; at the same time, SDA's should closely monitor local service providers. States and SDA's are encouraged to explore ways of relating overall costs of job training to long-term employment, earnings and reductions in welfare.

The final regulation also incorporates the requirement, in section 106(j) of the Act, for the imposition of a reorganization plan on SDA's failing for 2 consecutive years to meet an appropriate proportion of the performance standards, with the exception of the older worker programs. The Governor is to notify the Secretary and the SDA of the continued failure and to impose a reorganization plan within 90 days of the end of the second program year; otherwise, the Secretary will develop and impose the reorganization plan. As mentioned before, with regard to the 90-day deadline for imposing sanctions, a few commenters believed that 90 days was insufficient time for States to evaluate and implement an effective reorganization plan. In addition, a few commenters sought clarification of what might constitute the imposition of a reorganization plan. The Department acknowledges that there may be some difficulty in timing but points to the language in section 106(j)(5)(A) of the Act. In response to the latter comments and in an attempt to alleviate the level of concern about the imposition of a reorganization plan, the final rule is amended by adding a new paragraph (c)(4)(iv) to § 627.470 which provides the minimum requirements for the imposition of a reorganization plan. The Secretary will give the Governor and the SDA 30 days in which to comment to the Secretary on the proposed reorganization plan prior to its imposition. Further, the Secretary will recapture or withhold up to one-fifth of the State's administration set-aside to provide technical assistance to an SDA where the Secretary has imposed the reorganization plan or where the

Governor has not provided appropriate technical assistance.

Reorganization Plan Appeals

No comments were received on the provisions of this section and no changes are made in the final rule.

Oversight and Monitoring

Several comments were received on oversight and monitoring. Section 627.475 summarizes the roles of each administrative level in a comprehensive monitoring and oversight system. The monitoring provisions are expanded to require the Governor to develop a monitoring plan which requires that each SDA and SSG be monitored at least once annually. The plan must also require the collection and review of sufficient information to enable the Governor to determine whether substate entities have demonstrated substantial compliance with the oversight requirement to permit a waiver of the imposition of sanctions authorized under section 164(e) of the Act, or to determine whether a job training plan should be disapproved pursuant to section 105 of the Act. The regulations also require the Governor to be responsible for issuing standards to SDA's and SSG's for the development of a local monitoring plan. Additionally, the regulations require the Governor to develop general standards for PIC oversight responsibility for inclusion in the Governor's coordination and special services plans.

One commenter requested that the Department of Labor provide greater details regarding its own monitoring responsibilities as well as those of the States. The Department is in the process of developing guidance in this area and, when completed, will provide more detailed information on monitoring and oversight through administrative issuances.

One commenter observed that the emphasis in paragraph (b)(3) was unnecessarily on criteria for disapproval of the plan when, in fact, the Act called for the Governor to approve a plan unless it did not meet certain criteria. The commenter suggested that paragraph (b)(3) be revised to read "Determines that a job training plan shall be disapproved if the plan does not meet the criteria established in section 105(b)(1) of the Act which states in part, the Governor shall approve the job training plan or modification thereof unless he finds that the plan does meet the criteria found in section 105(b)(1)". The Department concurs with this comment and, although the Department did not adopt the suggestion *in toto*, paragraph (b)(3) is revised to better reflect the statutory criteria for disapproval of the job training plan.

A few commenters requested clarification of what elements of an SDA's and SSG's operation must be monitored not less than once annually. The Department believes that an effective monitoring program is important to improving or maintaining high levels of program performance. The Department wishes to provide states with flexibility in designing the nature and extent of their monitoring programs while assuring that monitoring is thorough. Paragraph (b)(5) is revised to indicate that all aspects of the SDA and SSG program must be reviewed annually, although the Department wishes to clarify that the degree of emphasis placed upon the review of each area of a program may vary from year to year.

A few commenters expressed concern with the PIC responsibility for oversight as it relates to the Governor and the chief elected official. The commenters suggested that the PIC should be allowed flexibility to determine the type and amount of PIC oversight. Section 103(a) of the Act states that it shall be the responsibility of the PIC to provide policy guidance for, and exercise oversight with respect to, activities under the job training plan for its SDA in partnership with the unit or units of local government within its SDA. The Department agrees that it is primarily the responsibility of the PIC to determine its monitoring and oversight role. While the regulations give the Governor a role in PIC oversight in an overall context, the Department does not expect any guidelines issued by the Governor to be overly prescriptive. Therefore, the PIC should have a great deal of flexibility in setting its monitoring role. No change is made to the final regulation.

Governor's Authority to Remedy Violations

In reviewing the interim final regulations, the Department realized that it had not fully implemented section 164(b) of the Act in the regulations. Sections 627.477 and 627.607 are added to complete the regulatory implementation of section 164(b) regarding the Governor's actions where there are substantial violations of the Act or the regulations and corrective actions have not been taken. Conforming changes have been made in §§ 627.601(b), 627.471(a) and 627.702. These added provisions and changes are not intended to modify or expand on the plain meaning of the statute.

Audits and Audit Resolution

Because there are both non-profit and commercial organizations which are direct recipients of JTPA Title III program funds, the language at § 627.480(a)(2) and (3) is modified by the addition of the term "recipients", as well as by substituting the term "organizations" for "subrecipient" in paragraph (a)(2). The interim final regulations implied that non-profit and commercial organizations can only be subrecipients.

Audits of Commercial Organizations

Several commenters raised questions concerning the audit requirement for "commercial organizations".

A few commenters wanted clarification concerning whether or not the audits of proprietary schools, which are required by the U.S. Department of Education because of their involvement with Pell grants and other subsidies, would satisfy the JTPA audit requirement. One commenter was concerned that the regulation did not provide a timeframe within which these audits were to be completed, and another expressed concern that the requirement for an annual audit was more frequent than that for non-profit institutions. The regulation, at § 627.480(a)(3), is amended to provide for audit timeframes and frequencies that are consistent with the OMB Circular A–133 requirements for non-profit organizations. This provision also provides the option of either a Federal funds audit or an organization-wide audit as long as the audit includes financial and compliance coverage of the JTPA program within its scope. The option of a Federal funds audit should be satisfied by the audit required by the U.S. Department of Education so long as it includes financial and compliance coverage of the JTPA program within its scope.

A few commenters requested clarification concerning the audit requirement for OJT employers, commercial off-the-shelf training packages, tuition-based individual referral contracts, and other "vendor" type arrangements. The regulation imposes an audit requirement only on organizations that are "subrecipients" and not on those that are "vendors".

A few commenters asked if the regulation prohibited a Governor (this would also apply to any awarding agency) from procuring a program specific audit for commercial organizations and directing them to exclude JTPA from their organization-wide audit. The regulation only talks to the requirement to have an audit done,

not to who will procure and/or conduct the audit. If the awarding agency and its subrecipient agree that the awarding agency will procure and/or conduct the audit, the requirement of the regulation would be satisfied.

Responsibility for Subrecipient Audits

A few commenters had difficulty with the language at § 627.480(d). One of these commenters thought that the regulation went beyond OMB Circular A–128 and required that debt collection be completed within the 6-month resolution period. This is not the case. When costs are disallowed and debt collection is the appropriate sanction, those efforts should be initiated or started within the 6 month period. This often is accomplished by including appropriate language in a final determination. However, the actual repayment most often occurs after the 6-month resolution period. Also, debt collection efforts are often put on hold when a final determination is appealed.

To address these concerns, the parenthetical reference in paragraph (d)(2) is moved to the end, and the phrase "where appropriate," is inserted. Paragraph (d)(3) is divided into two sentences.

Waivers of Liability

One commenter pointed out a conflict between § 627.480(f) and § 627.704(a). Paragraph (f) is removed from this section and added to § 627.704. The remaining paragraphs of § 627.480 are redesignated.

Stand-in Costs

There were a number of commenters who raised concerns and questions about § 627.480(g), which is now redesignated as paragraph (f). Several of these commenters were among those who commented on the definition of "stand-in costs".

A few commenters indicated that stand-in costs should not have to be from the same cost category as the unallowable costs. Others pointed out the discrepancy between the definition and this regulation concerning the time when such costs were incurred. As a result, the last sentence of redesignated paragraph (f) is revised so that both it and the definition at § 626.5 state that the costs are to be from the same program year and that the substitution cannot result in a violation of the applicable cost limitations.

Several commenters stated that "stand-in costs" should be allowed as substitutes regardless of the year or program/title that generates them. Such an interpretation runs counter to the intuitive concept of substituting to make whole the program that bore the cost of the misexpenditures. It is also contrary to ETA's interpretation of the General Accounting Office (GAO) Comptroller General decision which is the basis for the position on "stand-in" costs. The GAO-decision indicates that, when an audit reveals total allowable program costs which exceed the total amount authorized and paid with program funds, the resolving agency is obligated to accept those program costs as substitutes for disallowed costs. This is true because funds which become available due to the disallowance of costs should be treated as funds never expended by the auditee. Thus, the stand-in process constitutes a part of the totality of allowed and disallowed costs which occurs at the audit resolution stage before a collectible debt is established. The regulation, at § 627.480(f), is written to incorporate this concept of substitution for unallowable costs incurred by the auditee when the stand-in costs are reported (on the JTPA quarterly financial report form) and accounted for in the auditee's financial system, and are included within the scope of the auditee's audit report. Although potential stand-in costs are aggregated for reporting purposes only, this does not create a pool of stand-in costs at the higher tier when funds are merely passed through from one level to the next (*e.g.*, State to SDA or other government entity). When "stand-in" costs are reported on the JTPA quarterly financial report and included within the scope of an entity's audit, they are readily identifiable and available to substitute for unallowable costs identified in the same report. This is important because by the time an audit report is finally resolved, the three-year availability period for the costs disallowed has often lapsed or is nearing its end. By having contemporaneous allowable JTPA costs incurred (but paid for with local resources) during the same period as the unallowable costs, there is no question about the propriety of the substitution.

A few commenters raised questions concerning the requirement to report "stand-in costs". A few asked if they needed to be reported on the quarterly reports required by the Department. One asked if these costs could be reported after the fact only when needed, instead of being reported whether or not an SDA is permitted to and/or needs use them. Others suggested that they should be allowed even if not reported. One suggested that the requirement to report exceeded the statutory requirement that they be recorded. As explained above, it is ETA's position that "stand-in costs" must be subjected to audit coverage in order to be accepted. Imposing the requirement that the costs be reported and providing a line for these costs on the JTPA quarterly financial report(s), insures that these costs are included within the scope of the audit report.

A few commenters suggested that the JTPA compliance supplements for OMB Circulars A–128 and A–133 audits be revised to require that such audits include a separate schedule for "stand-in costs" and to specify the documentation requirements for same. The documentation requirements, including retention requirements, are the same as for all JTPA costs incurred. While the Department is not in a position to dictate whether A–128 and A–133 audits include an additional schedule, when the compliance supplements are revised, it may be possible to suggest how "stand-in costs" should be treated in such audits.

Direct Appeals by SDA's

Several commenters suggested that § 627.480(h) should be revised to provide the right of a direct appeal by an SDA, especially in those instances when a State chooses not to appeal. However, the initial and final determination process utilized by the ETA Grant Officer imposes a sanction on the direct recipient of funds from ETA, and it is that recipient that ETA holds liable for the sanction. If the entity upon whom the sanction is imposed chooses not to appeal, there is no dispute between that entity and ETA. If an appeal of a Grant Officer's final determination is taken, affected subrecipients are permitted to intervene in the proceedings. An SDA has the right to appeal any adverse determination against it within the State appeal system.

Audit Resolution

Section 627.481 is not changed from the interim final regulations. One commenter suggested that § 627.481(a)(1) should permit direct recipients to have 6 months within which to submit their resolution report. The Department believes that to do so would mean that the recipient's audit would not be resolved with its awarding agency within the 6 months required by the OMB Circulars. Another commenter suggested that the title for the paragraph at § 627.481(c) should be State level audit resolution. However, this paragraph also applies to resolution beyond the State level (e.g., the resolution of a service provider audit by an SDA). A third commenter suggested that the regulation at § 627.481(c)

should mandate that audit work papers be accessible to the auditee. Since these audits are procured by the auditee, it is within their purview, and not the Department's, to include requirements concerning work papers in their agreement with the auditors.

Closeout

One commenter suggested that waiting 3 years (the full period during which funds are available for expenditure) to close out a grant that can be closed in 1 to 1½ years is confusing and unnecessary. It was also stated that this provision should allow closeout to occur as soon as all of the funds are expended or within 90 days after the end of the funding period. A second commenter suggested that the word "timely" is a subjective term and that the provision should require closeout to occur within 90 days after the end of the funding period, unless the deadline is extended. This same commenter indicated that the regulation should be clear that closeouts are based on year of appropriation. Several of the comments indicated an apparent misunderstanding that § 627.485 applies to subrecipient awards. In fact, this provision is intended to inform the direct recipients of the Department's intention to close out each annual grant agreement within a short period after the availability of the funds has lapsed. The Department has determined that it is much more appropriate and less confusing to close out all of the annual JTPA grant agreements (described at § 627.405 as the funding document for an individual program year's funds) at the same time.

One commenter suggested that the language in the last sentence of paragraph (b) should allow for additional revisions, as long as there is a good reason that is adequately documented; further, the commenter suggested such revisions could be handled through an increase or decrease in the "carryover" amount. The first sentence of the paragraph allows for a 90-day period within which revisions may be made without a requirement for justification. The second sentence allows the Grant Officer to extend the period for revisions if the recipient requests an extension and provides a justification for same. The Department sees no need for any change to this provision. Also, at the end of the three-year funding period, there are no "carryover" funds, only funds for which the three-year availability has lapsed. These funds must be returned in accordance with paragraph (c) if they have been drawn down, and will be deobligated by ETA.

Later Disallowances and Adjustments

One commenter stated that the final rule should identify the period within which the Grant Officer has the authority to disallow costs. Such an action is not necessary. If an audit or review is conducted while the records are still available in accordance with the requirements of § 627.460 (i.e., 3 years after submittal of the final expenditure report for the funding period) and there are unallowable costs, then the Grant Officer can disallow those costs.

Collection of Amounts Due

One commenter indicated that this provision must acknowledge that there are processes at the local level which impede collection of disallowed costs and which prohibit collection efforts by the Federal Government (or State) during the time when the State (or local) collection actions are in process. Other sections of these regulations (e.g., § 627.485) contain provisions which allow recipients to request additional time to complete such a process. However, once a Federal debt is established against a recipient, it is that direct recipient which the Department holds liable. The provision is not changed.

Grievances and Sanctions

The interim final rule revised, redesignated, and reordered the regulatory provisions formerly found at 20 CFR part 29, Subpart D—"Grievances, Investigations, and Hearings" in a new part 627, subparts E, F, G, and H. The interim final regulations more clearly defined the various JTPA grievance procedures required to be established by section 144 of the Act. The procedures applicable to a particular grievance process level were consolidated into discrete subparts.

Subpart E—Grievance Procedures at the State and Local Level

The new part 627, subpart E, sets forth the grievance procedures required at the State and SDA and SSG levels, including State review, that were generally found at 20 CFR 629.52.

A commenter suggested that the reference to the handling of complaints alleging discrimination in § 627.500(a) be made a separate paragraph.

The Department agrees with the suggestion and § 627.500 is revised to redesignate the last sentence in paragraph (a) as a new paragraph (b), Handling of discrimination complaints. In addition, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively.

A commenter observed that under the previous regulations, complaints involving fraud, waste, abuse, or criminal activity were to be reported to the Secretary, and that § 627.500(b) of the interim final regulations now provides that such complaints are to be reported to the DOL OIG. The commenter's concern was that ETA might not be aware of, but had a need to know of, such complaints, and recommended that the regulations be amended to also include notification to ETA for such complaints. Another commenter suggested that complaints be reported concurrently to ETA and the OIG.

The purpose of the interim final regulations was to ensure that criminal activity was directed to the OIG for resolution. Other processes set forth in the regulations for the handling of complaints are designed for non-criminal JTPA complaints. The provision at § 627.500(b) is amended to provide for reporting criminal activity to the OIG, Office of Investigations through the Department's Incident Reporting System, with a copy simultaneously provided to ETA. Other non-criminal complaints will continue to be handled under the procedures set forth at part 627, subparts E and F, and through the Department's Incident Reporting System.

A commenter recommended deleting § 627.500(c)(2) concerning a private right of action with respect to alleged violations of JTPA statute or regulations in pursuing non-JTPA remedies since there is no statutory authority for the provision.

The provision at § 627.500(c)(2) is not a new provision. Prior to the interim final rule, it was set forth at 20 CFR 629.51(b)(3) since the March 15, 1983 regulations implementing JTPA. It does not preclude a private right of action if one exists, but rather indicates that nothing in the Act or in the regulations creates such a right. No change is made to the final rule.

A commenter recommended that States, SDA's, and SSG's be required to develop their grievance procedures in such a way as to broadly inform participants under the JTPA system of their rights.

The Department believes that the Act and regulations clearly set out the broad outlines of the grievance, hearings, and appeal rights under JTPA for interested parties. The specific complaint and grievance procedures to be followed are appropriately developed at the State and local level in accordance with the provisions of the Act and these regulations. Such procedures are routinely made available to participants

upon entering the program, and to subrecipients and other interested parties. No change is made to the final rule.

A commenter recommended that States should be required to establish timeframes for resolving complaints and recommended a 60-day time period.

The Department expects that State, SDA and SSG grievance procedures already address this issue as an integral and necessary part of their procedures. In any case, the regulations already include a 60-day time period at §§ 627.502(c) and 627.503 (a) and (c) of the interim final rule. Therefore, no change is made to the final rule.

A commenter recommended that a neutral third party be included in the grievance processes at the State level under § 627.501, and the SDA and SSG level under § 627.502, to hear and act upon complaints. In addition, the commenter suggested that programs should be encouraged to take advantage of recent Federal initiatives related to mediation of disputes.

The interim final regulations already provide for the use of neutrals in the JTPA grievance process in certain situations. For instance, such use is included in binding arbitration proceedings under the alternate procedure for handling labor standards violation under section 144 of the Act, and the alternative dispute resolution provisions at § 627.805 available to parties to a complaint under § 627.801, Procedures for filing a request for hearing. The regulations also provide for an independent review of complaints at the State level pursuant to the provisions at § 627.503. No change is made to the final rule.

A commenter recommended increased DOL participation in monitoring and handling complaint processes at the State and SDA and SSG levels, including regular participation in grievance hearings.

The grievance procedures established pursuant to section 144 of the Act, and set forth at §§ 627.501 and 627.502 of the interim final rule, are intended to ensure due process and to provide for the timely and orderly processing of JTPA complaints at the State and local levels. The regulations also provide for a State-level review of local grievances, as set forth at § 627.503. There is also provision for Federal-level review of State and local-level complaints without decision at §§ 627.601(a) and 627.605. It would be premature and improper to interject the Department into a State or local grievance process before it is completed. It would also create problems in the event that the Department was subsequently requested to review a complaint in which it had participated. The Department believes that the regulations set forth in the interim final rule are appropriate and consistent with the legislative provisions. Therefore, no change is made to the final rule.

A commenter recommended that the time period for requesting a State-level review of a local complaint, provided under § 627.503(c) of the interim final rule, be increased from 10 and 15 days to 30 days.

Under the statutory provisions at section 144, and the regulatory provisions at part 627, subparts E, F, G and H, the grievance procedures established at the various levels are intended to provide the speedy processing of filed complaints. The Department believes that the timeframes established in the regulations are consistent with the statutory scheme. No change is made to the final rule.

A commenter recommended including examples of independent reviewers at § 627.503(b) pertaining to State level review of complaints.

The Department does not believe that it is appropriate to include a laundry list of examples of possible independent reviewers in the regulations, but agrees that some clarification in this area is warranted. Section 627.503(b) is amended in the final rule to indicate that independent review should be conducted by a reviewer who is not connected with the JTPA program.

A commenter recommended amending the employer-level grievance provisions at § 627.504 to indicate that if an employer is required to use grievance procedures under a covered collective bargaining agreement, then those should be the operative procedures for the handling of JTPA complaints at that level. In addition, it was recommended that if no collective bargaining agreement exists, participants should be made fully aware of their rights to file a grievance either by using the employer's grievance procedures or the SDA's JTPA grievance procedures.

The Department agrees that where the employer is required to follow a certain grievance procedure under the provisions of a collective bargaining agreement, those procedures should be followed for complaints pertaining to the terms and conditions of employment of JTPA participants, therefore, § 627.504(b) is revised accordingly. The regulations provide that recipients, SDA's and SSG's shall ensure that employers have grievance procedures available to their JTPA participants. Some commenters suggested that participants be permitted to choose a grievance procedure under which to process a complaint. The regulations indicate that employers of JTPA participants may elect to operate their own grievance procedures or use the recipient's, SDA's or SSG's grievance procedures established pursuant to section 144 of the Act. The employer must inform participants of the procedures they are to follow when they begin employment. The choice of which grievance procedure to follow does not extend to the individual participants. Since the relationship exists between the employer and the JTPA entity in the first instance, it is important that all of the procedures and provisions applicable to a given employer, including grievance procedures, are clearly established in the agreement. The Department believes that the existing regulatory provision is consistent with the provisions of the Act, avoids potential confusion that could result from the recommended change, and provides for the consistent treatment and processing of JTPA complaints at the employer level. No change is made to the final rule.

Subpart F—Federal Handling of Non-criminal Complaints and Other Allegations

A commenter recommended that the reference to the handling of discrimination complaints at 20 CFR 627.600 be made a separate paragraph. The Department agrees with this recommendation and is amending the final regulations to redesignate the first two sentences of § 627.600 as paragraph (a), and the last sentence, pertaining to discrimination complaints, as paragraph (b).

A commenter recommended revising § 627.601, noting that section authorizes the receipt of complaints at the Federal level without mention of the statutory preconditions for such acceptance that are partially explained in paragraphs (a)(2), (a)(3) and (a)(5) of that section. Further, the commenter argued that although some of the preconditions for acceptance of a complaint at the Federal level appear in later sections of the regulations, § 627.601, as written, is unauthorized by the Act and is misleading.

The provisions at § 627.601 are not intended, by themselves, to spell out all of the preconditions that apply to the various complaints and allegations that may be filed at the Federal level, but rather are intended to indicate the types of such complaints that may be received and the options available to the Secretary for the handling of such complaints. The provisions that apply to the Federal handling of non-criminal

complaints and other allegations are set out in all of subpart F and must be viewed in their entirety to determine how they apply. The various sections in subpart F either include the preconditions for filing a complaint or cite other provisions of the Act and/or JTPA regulations which spell out such preconditions. The Department believes that the regulatory provisions are consistent with, and accurately reflect, the provisions of the Act. No change is made to the final rule.

A commenter suggested that, under the provision at § 627.601, the Governor does not have final determination authority in any complaint because the regulations specify that Federal level reviews may include all of paragraph (a), which includes *any* violation of the Act, and recommended that the final rule provide clarification in this area.

The regulations, at § 627.503(d), provide that, with the exception of complaints alleging violations of the labor standards at section 143 of the Act, the Governor's decision is final unless the Secretary exercises the authority for Federal-level review set forth at § 627.601 of the interim final regulations. The provisions at § 627.601(a) reserve the Secretary's authority to receive and review complaints alleging a specific violation of the Act and/or JTPA regulations, notwithstanding resolution of a complaint under procedures at a lower level. Upon receipt, the Secretary may handle such complaints, as set forth at paragraph (b) of that section. The Department believes that the regulations accurately reflect the Secretary's and Governor's authority in this area and that further clarification in the regulations is not needed. No change is made to the final rule.

A commenter noted that, in the remedies available for labor standards violations, § 627.603(c)(3) refers to "back pay," and paragraph (d)(2) of that section refers to "lost wages" and asked for a definition of these terms.

The interim final regulations incorporated the statutory language pertaining to remedies for labor standards violations at section 143(f) of the Act, which includes these two terms. The Department believes that, from a practical standpoint, there is no difference in these two terms. Both terms refer generically to "compensation" in the context of appropriate remedies; under paragraph (c)(3), wages are not an available remedy, while they are an available remedy under paragraph (d)(2). In applying a remedy, these terms would refer to the amount of compensation (excluding benefits which are separately provided for) that a person would have received had the violation not occurred. The Department believes that the regulations are sufficiently clear and that further clarification is not needed. No change is made to the final regulations.

A commenter disagreed with the provision at § 627.603(b)(4) which provides that there is no ALJ review of the Secretary's decision upholding the Governor's decision in complaints alleging section 143 labor standard violations.

The Act, at section 144(d)(2), specifically provides that the Secretary may modify or reverse the Governor's decision on a complaint alleging a labor standards violation, or issue a decision if no decision has been issued, only after an opportunity for a hearing before an administrative law judge of the Department of Labor. The opportunity for an ALJ hearing is limited to actions by the Secretary to change a Governor's decision or to issue a decision as provided for at section 144(d)(2) of the Act. The provisions at section 144(d)(3), pertaining to the Secretary upholding the Governor's decision, specifically state that the Secretary's decision "shall become the final decision of the Secretary." The Department believes that the regulations accurately reflect, and implement, the provisions at section 144(d) of the Act. No change is made to the final regulations.

No comments were received on § 627.604 and no change is made to the final rule.

A commenter recommended that under the provisions at § 627.605, Special Federal review of SDA and SSG-level complaints without decision, where there has been no action on a complaint at the local level the Department should not only act on the individual complaint, but also conduct a thorough review of the administrative capabilities of the SDA/SSG. In addition, the Secretary should be prepared to impose more than just a sanction for failing to issue a complaint decision, but also impose corrective actions up to and including reorganization of the SDA/SSG.

The provision at § 627.605 pertains to actions that may be taken against the Governor for failing to provide a decision as required at § 627.503(a) of the regulations. These actions may include imposing a sanction for failing to issue a decision pursuant to the provisions at § 627.605(b). The right of the Secretary to review SDA/SSG operations for compliance with the Act and applicable JTPA regulations is reserved at § 627.601(b) of the regulations. The Department believes that the regulations provide adequate and appropriate procedures for the handling of complaints alleging violations of the Act and JTPA regulations at the Federal, State, and SDA/SSG levels, consistent with implementing the provisions of the Act. No change is made to the final rule.

A commenter indicated that there were two paragraphs (d) in § 627.606. The second is now redesignated as paragraph (e). Another commented that the correct reference in § 627.606(d)(2)(vii) should be subpart H. The final rule is corrected. Also, the heading of § 627.606(c) is changed to read, "*Informal resolution*".

Subpart G—Sanctions for Violations of the Act Liability of Units of Local Government

A few commenters objected to the Department's singling out units of local government for bearing liability for funds misexpended by their SDA/SSG. It is not the Department's intent to single out units of local government to bear liability, but it is the Department's intent to make clear that neither a separately incorporated administrative entity (*e.g.*, a PIC) nor a local unit of government can insulate (liability-proof) itself from responsibility for misexpended funds. This is a more clearly expressed statement of the Department's position, and does not constitute a change in policy or position. One commenter expressed full support for the provision while another thought it should be made even stronger by requiring local government units to be held liable. The provision is not changed. The Department encourages incorporated PIC's to be active participants in the delivery of JTPA services. To this end, the provisions of § 628.415(b) indicate that the Governor's requirements on responsibility for JTPA funds may not, on their face, preclude the selection of an incorporated PIC as the grant recipient.

Waiver of State Liability

As a result of a comment concerning § 627.480(f), discussed above, the second sentence of § 627.704(a) is removed. It is replaced with two new paragraphs, (b)(1) and (b)(2), which address the timing of requests for waiver of State liability. The remaining two paragraphs are redesignated as paragraphs (c) and (d), respectively.

A few commenters suggested that SDA's should be allowed to request waivers. Some indicated that such requests should be made in conjunction with States, while others seemed to imply that such requests could be made directly, bypassing the State. However,

as indicated at § 627.702(e), it is the recipient that is held liable by ETA. Therefore, the only liability that ETA can waive is the recipient's liability for the sanction imposed on it.

Several commenters suggested that the provision should be revised to permit a waiver in those instances where the fraud was perpetrated against the recipient/subrecipient so as to avoid penalizing entities which discover, report, investigate and prosecute the perpetrator of such fraud. Both this provision at § 627.704 and the provision at § 627.706 Process for advance approval of a recipient's contemplated corrective actions are revised for such situations.

Offset Process

A few commenters expressed the belief that States would not request "offset" if it were limited to State-level administrative funding. A commenter also indicated that most misexpenditures occur at the subrecipient level and that, if it is not a section 164(e)(1) violation, offset should be allowed at the level where the misexpenditure occurred. Another suggested the need to be flexible after considering all of the circumstances in the individual case. Section 164(d) of the Act indicates that offset may be "against any other amounts to which the recipient is or may be entitled * * *." (Emphasis added) Under title II, the recipient must allocate 77 percent of the funds to SDA's and is entitled to retain 23 percent of the funds allotted for specifically identified activities. It is the Department's position that a reduction in the funds available through the "offset" process should not adversely impact the delivery of training and services to participants, nor the incentive grant and capacity building activities. Therefore, the Department believes that only the title II five percent (5 percent) administrative funds to which the recipient is entitled should be available for offset. Similar reasoning applies to the Department's restriction for title III funds. The Department fully expects that recipients will seriously consider their options, and the consequences thereof, and will not make frivolous use of this provision.

A commenter indicated that use of the phrase, "amounts chargeable", in § 627.708(b), conveys the implication that the administrative costs must be incurred before they can be "offset". This was not the Department's intent. The provision is rewritten to indicate that "offset" may be against amounts allotted that are expected to be used for recipient-level administrative costs.

Subpart H—Hearings by the Office of Administrative Law Judges

A commenter recommended amending the regulations at § 627.800(a) to include Grant Officer Final Determinations made pursuant to § 627.606 under the ALJ hearing process in addition to those specified at section 166(a) arising in connection with alleged violations of sections 141(c), 144 (d) and (e), 164(f) and 167 of the Act.

Section 166(a) of the Act provides that an ALJ hearing may be requested by any recipient upon whom a corrective action or sanction has been imposed by the Secretary. By definition this would include final determinations made by the Grant Officer. The Department believes that the general provision included in section 166(a) of the Act is sufficiently clear in establishing the jurisdiction of the ALJ and that further clarification is not needed. No change is made to the final regulations.

A commenter objected to the restrictions placed on the jurisdiction of the OALJ regarding specific sections of the law which the commenter believes will reduce the opportunity for complainants to have full redress of their grievances at the highest levels.

The OALJ coverage is as provided for at section 166 of the Act, and set forth at § 627.800 of the interim final regulations. As noted in the response to the preceding comment, the OALJ's jurisdiction includes more than just the specific sections cited at section 166(a) of the Act. No change is made to the final rule.

A commenter raised some concerns regarding the entities specified at § 627.801(a) that may request an ALJ hearing based on a Grant Officer's final determination which imposes a sanction, a corrective action, or denies financial assistance. It was correctly suggested that the Grant Officer might issue a sanction upon a "vendor" and paragraph (a) is amended to cover such situations. A commenter recommended that the provisions at § 627.801(a) pertaining to procedures for filing a request for an ALJ hearing could be made clear that a request for a hearing must be submitted by certified mail, by changing the words "may transmit by certified mail" to "must transmit by certified mail."

The Department agrees that the provision at § 627.801(a) of the interim final regulations seems to indicate that the use of certified mail to transmit a request for a ALJ hearing is discretionary, which was not intended. The provision at § 627.801(a) is amended to indicate that the Grant Officer's final determination to impose a sanction or corrective action, or to deny financial assistance *may* be appealed to the OALJ within 21 days of receipt of the final determination, and that a request for a hearing shall be transmitted by certified mail, return receipt requested to the Chief Administrative Law Judge.

The Department has reviewed § 627.802(e) in light of the recent Supreme Court decision in *Director, Office of Workers' Compensation Programs* v. *Greenwich Collieries*, 114 S.Ct. 2251, 62 U.S.L.W. 4543 (June 20, 1994) which addresses the allocation of burden of proof in cases governed by § 7(c) of the Administrative Procedure Act and has concluded that no change in this section is required. In Greenwich Collieries, the Supreme Court concluded that a claimant for benefits under the Black Lung Benefits Act was the "proponent of a rule or order" under section 7(c) of the APA and, as such, carried the burden of persuasion. Section 627.802(e) of these regulations is predicated on the fact that in appeals from Grant Officer Final Determinations the grantee is the proponent of the rule since, in the absence of an appeal, the Final Determination would represent a final debt due and owing the United States. The grantee seeking to avoid this outcome is clearly the "proponent of the rule or order." This construction is also consistent with section 165 of the Act which places on grantees the affirmative obligation to maintain adequate documentation to prove the allowability of costs incurred. While the grantee has the burden of persuasion, in our desire to ensure orderly presentation of evidence, the Grant Officer retains the obligation to prepare and present the administrative file.

In addition, a few of the commenters noted typographical errors or incorrect statutory and/or regulatory citations in part 627, subparts E, F, G, and H which are corrected in the final rule.

Subpart I—Transition and Implementation

On June 3, 1993, the interim final rule was amended to revise the transition provisions at part 627, subpart I (58 FR 31471). Those requirements are restated in the final rule, along with the addition of a definition of "initiation of procurement" (§ 627.904(e)) and a provision for the transfer of summer program funds (§ 627.904(k)(2)).

A number of general comments were received on the difficulties and uncertainties of the transition to the new program to be implemented on July 1, 1993 and whether the contents of the interim final rule adequately addressed a range of questions on the transition.

Subsequent to the publication of the interim final rule on December 29, 1992, the Department conducted implementation training for the States in February and March of 1992, provided transition guidance in Training and Employment Guidance Letter 7–92 on March 8, 1993, and issued two sets of questions and answers on the transition and interim final rule to the Department of Labor regional offices by Field Memorandum that were widely circulated throughout the JTPA system. The Department believes that these mechanisms with the additional guidance reflected in the June 3, 1993 **Federal Register** document, referenced above, substantially answered the various transition questions and issues that were raised and that a further discussion here is not required.

Part 628—Programs under Title II of the Job Training Partnership Act

Nontraditional Employment for Women (NEW) Act (Pub. L. 102–235)

The Nontraditional Employment for Women (NEW) Act includes a series of amendments to the JTPA. NEW's purposes are to provide a wider range of training opportunities for women under existing JTPA programs; to provide incentives for the establishment of programs that train, place, and retain women in nontraditional fields; and to facilitate coordination of JTPA and vocational education resources available for training and placing women in nontraditional employment. Further, the NEW Act is consistent with the overall goal of JTPA programs to increase participants' employment, earnings, educational and occupational skills. This separate discussion of the NEW Act is provided as a reminder to States and SDAs of the importance of efforts to train and place women in nontraditional employment and the emphasis the Department places on such efforts. There are contained in the final rule various references to the requirements pertaining to nontraditional employment for women, especially as they pertain to planning and setting goals, the assessment process and development of the individual service strategy, and to the various reports required by the Act.

"Nontraditional employment" is defined in the NEW Act as occupations or fields of work where women comprise less than 25 percent of the individuals employed in such occupation or field of work. Although nontraditional occupations are usually thought of only as construction or skilled trades, these occupations encompass a much broader spectrum of jobs, including those in technical and other fields.

Nontraditional occupations have the potential for greatly improving the economic status of women, particularly when they are growth occupations with increased wage potential. Nontraditional training for women also provides benefits for the States and the SDA's. The Department believes that this kind of training expands the occupational mix available to all customers, and can enhance coordination with other education and training programs, as well as with labor and apprenticeship programs. It helps advance efforts by the States and/or SDA's to be a valuable source of trained individuals for employers and unions. Through the implementation of NEW, it is the Department's intent that changes will occur throughout the job training system so that training in nontraditional occupations becomes institutionalized in each State. The GCSSP and the job training plan prepared by each SDA were required to include goals, actions, and accomplishments for the training and placement of women in nontraditional employment for the 2-year period beginning July 1, 1992 and beyond. NEW does not establish specific numerical goals by SDA or State. However, using General Accounting Office data (GAS/HRD–89–152FS, September 1989), the Department estimates that the proportion of women currently trained by JTPA in nontraditional occupations nationwide is about 9 percent. Therefore, at their option, States and SDA's may use this figure as a substitute for a particular State's baseline until they can collect data specific to that State. States should strive for a goal for training and placing more than 9 percent of women participants in nontraditional occupations.

The Department expects that the GCSSP and the SDA's job training plan will reflect specific measurable activities to train and to place women in nontraditional employment and apprenticeships, as required by the statute. As mentioned earlier, SDA's may wish to consider using the national figure of 9 percent as an indication of the pre-NEW level of nontraditional training until geographic-specific data becomes available. Sections 104(b)(6) and (13), 121(b)(3) and 122(b)(5)–(7) of the Act require the States and SDA's to set goals and report on program accomplishments. The Department intends to look closely at these activities to ensure compliance with requirements of NEW.

Further, the Department expects that each State's and SDA's plans and activities will reflect the development of outreach and promotional materials and/or activities aimed at making women aware of the programs and the services available through JTPA, particularly of nontraditional training and placement opportunities. Examples of outreach materials include, but are not limited to, nontraditional career information modules, video and print materials on nontraditional career options (for counselors), recruitment brochures targeted at both the customer and the employer, and dissemination of preexisting resource materials and/or model curricula. States may also wish to undertake statewide public education campaigns, similar to those conducted for literacy programs, on nontraditional training and employment opportunities. The Department expects statewide dissemination of model programs/approaches to serve as a method of encouraging the replication and institutionalization of nontraditional training in the State. The Department encourages the States to disseminate to SDA's and service providers the SJTCC's summary report on promising programs funded by JTPA or the Carl Perkins Vocational Education and Applied Technology Act.

Most of the comments that pertained to NEW sought to add to the regulations a number of specific requirements regarding services to women and focussed on nontraditional employment. These suggested requirements ranged from language to requiring OJT goals for women in nontraditional employment, as well as standards for OJT contracts, to specific procurement requirements as they pertain to women-owned businesses, and specific monitoring requirements. The Department believes that many of these ideas have merit but does not believe that it is appropriate to establish them as Federal regulatory requirements beyond that which would otherwise be required by the provisions of the Act—particularly as the Federal Government looks to reduce administrative requirements. On the other hand, a commenter suggested that the regulations ought to reflect the statutory requirements. The Department is persuaded that the NEW's requirements should be emphasized by referencing them, as appropriate, in the regulations and has done so in appropriate sections, including: § 627.455, for the annual report to the Governor that is to be described in the job training plan; § 628.205, pertaining to the State goals for the training and training-related placement of women in

nontraditional employment and apprenticeships; § 628.210, for the responsibility of the SJTCC to review and analyze the annual reports of SDA's and to distribute them in the State and to the Secretary; and § 628.420, for the SDA's local goals for the training and training-related placement of women in nontraditional employment. These are not new regulatory requirements; rather they are reflections of statutory requirements.

Specific changes in PART 628—Programs under Title II of the Job Training Partnership Act are as follows:

Governor's Coordination and Special Services Plans

Several comments were received on the Governor's coordination and special services plans. Section 628.205(c) of the interim final regulations required the States to provide their respective SDA's prior to December 31 of the year preceding the program years for which the plan is developed, information on its plans to undertake State activities in program areas, including education coordination and services to older workers, and capacity building.

Several commenters requested removal of the December 31 date. The commenters suggested the language be revised to say that the State should issue this information to SDA's in sufficient time for them to be able to take it into consideration in developing plans. The Department agrees with the commenters and this change is made to the final regulations in a new paragraph (c)(2).

State Job Training Coordinating Council

One commenter suggested that there should be a representative of the JOBS program on the Council. The Department agrees that this would be a good step. However, since JOBS representatives can be included within the meaning of "representatives of state public assistance agencies", as set forth at section 122(a)(3)(b)(i) of the Act, no change is made in the final regulations.

State Human Resource Investment Council

Several commenters were concerned that the regulations did not require, or at least encourage, that membership on the SJTCC or the HRIC include the State Agency on Aging or a designee to ensure that the needs of older workers are addressed. It was stressed that such representation on these councils would improve the commitment to older workers and promote the development of integrated service systems for older workers. The Department agrees that the needs of older individuals should be addressed in the provision of JTPA services; however, in interpreting requirements of the Act at sections 122(a)(3)(B)(i)(SJTCC) and 702(b)(5)(HRIC), the Department believes there is already sufficient latitude and flexibility for the Governor to appoint a representative from the State Agency on Aging and further regulation is not necessary.

A commenter noted that it would be helpful to clarify in paragraph (a) of the regulation that, when the State Council on Vocational Education (SCOVE) is incorporated in the HRIC, the HRIC is responsible for carrying out the functions of the SCOVE. The Department believes that this is clear in the provisions of the Act and in § 628.215(e) of the regulations. No change is made to the final rule.

A commenter suggested that, when the SCOVE is included within the HRIC, it would be beneficial to include the State Director of vocational education on the HRIC since the State Director plays an important role in education within each State, especially in coordination and improvement of educational services. The Department agrees and the final rule at § 628.215(c) encourages the Governor to consider appointment of the State Director to the HRIC.

A few commenters questioned the accounting basis for funds that are made available to the HRIC. Some wished to ensure that when funds are made available to the council the statutory activities for which they are intended are accomplished. Another commenter pointed out that the requirement to allocate funds on the basis of "benefits received" goes beyond the requirements of the Act and the Conference Report, which simply specified that State agencies were encouraged to provide funds in a manner consistent with their representation on the council and that no agency's contribution be disproportionate. The Department has examined this issue and believes that the Act contemplates some flexibility in terms of how the costs of the activities of the Council relate to the various applicable programs. This is particularly true under circumstances in which there is a reasonable contribution on behalf of an applicable program. The Department has determined that, as specified in the Conference Report, the costs of the Council may be allocated upon the basis of the relationship of each funding source to the total funding of all applicable sources or programs that are represented on the Council. Finally, on the condition that there is a reasonable contribution from other involved Federal and State programs, the various activities of the council fall within the overall coordination mandates of the Act and the related costs are allowable JTPA costs to the extent that JTPA funds are available from applicable JTPA sources. The final rule is revised accordingly in paragraph (d).

In order to clarify the requirement of paragraph (g) regarding the certification of the HRIC by the Governor, the final rule is changed to indicate that the certification is to be in writing with a copy provided to the Secretary of Education.

Education Coordination and Grants

A number of comments were received on State education coordination and grants found at § 628.315 of the interim final regulations. In addition to the specific areas discussed below, the comments suggested confusion about the administrative framework for the development of the section 123 program and the need for a general description of the program. The section 123 program is to be a partnership between the JTPA program and the education system in the State. The Act provides a strong role for the State education agency by requiring that funds be allocated to the agency, and that the agency have a central role in planning and in the operation of the program. In order to foster coordination at the State level, the Act requires that the Governor and the State education agency agree on the use of funds as part of the joint development of the education part of the GCSSP. If there is no agreement, the regulations provide that neither party may use the funds. To foster coordination at the local level, the Act requires the State education agency to enter into agreements with the JTPA SDA administrative entities. If there is no agreement with the administrative entity, the Act indicates that the amount of funds specified for the SDA in the State-level agreement may be unilaterally used by the Governor for meeting the goals of section 123(c).

Several commenters raised concerns regarding the definition of State education agency. The commenters requested that the final regulations specify that the Governor may allocate the 8 percent funds only to the State Education Agency, as defined by the Elementary and Secondary Education Act of 1965. The Department believes that clarification is needed. The commenters argued that the definition of "state educational agency" in section 4(23) of the Act specifically refers to the agency defined in the Elementary and Secondary Education Act as the state education agency for JTPA purposes. The Department interprets the Act differently. The term "state educational

agency" is a different term from the term "state education agency," which is used in section 123(a) of the Act. The term defined in section 4 of the Act is used in section 122(a)(3)(B)(1) of the Act to describe membership on the SJTCC. Support for the view that the terms used in sections 4 and 123 of the Act are intended to be different is found in the use of the phrase "any State education agency" in section 123(a). If the Department were to read this phrase to mean a single agency, the reading would render the word "any" redundant. The Department reads section 123(a) to mean that, at a minimum, the Governor may consider as the State education agency that agency responsible for primary and secondary education, or responsible for vocational education programs under the Carl Perkins Vocational and Applied Technology Education Act and the Adult Education Act. In addition, the Department finds that a number of States have consolidated a number of education functions and agencies into various cabinet arrangements. For this reason, the Department has determined that the regulations should retain the statutory language "any education agency," but some changes are made in § 628.315(a) of the final rule. The phrase "or agencies" is removed from the final rule because the Department does not intend to cause confusion or appear to encourage the designation of multiple agencies; however, the rule should not be read to absolutely prohibit this practice under justifiable circumstances when significant parts of the education function are not within one agency. As previously reflected in the interim final rule, the Governor is not permitted to designate any agency for which "education" is not the primary and operational function, which means that the entity must actually be responsible for the operation of educational programs.

A commenter questioned the conditions under which the State JTPA entity can be found eligible to be a subrecipient of the 8-percent monies. The Act envisions the state education agency as receiving and using the section 123 funds. The State JTPA entity is only eligible to be a subrecipient if the agreement with the Governor and State education agency stipulates this as a part of the agreement. In response to the question of whether a portion of the funds may be used for certain administrative functions (*i.e.*, audit, oversight) the Department has stated in previous guidance that limited funds may be set aside for this purpose. This would be described in the joint agreement.

A commenter raised a concern regarding the time limit for negotiation between the Governor and the State education agency when negotiating the joint agreement in accordance with the provisions found at § 628.315(b) of the interim final regulations. While there is no specific time limit, the Department expects that the agreement would be in place in time to allow for the expenditure of funds allotted for the designated program period. No change is made to the final rule.

A few commenters questioned whether the State JTPA entity or the State education agency was responsible for the development of the plan for the use of funds. The Department believes that the State education agency has the primary role in development of the plan, but that the plan is to be developed jointly or in consultation. In practice, most arrangements for development of the plan which are satisfactory to the parties will be accepted by the Department, so long as there is joint agreement.

Several commenters raised concerns about the provision of the interim final rule that stipulates that when the Governor and the State education agency fail to agree to develop a joint plan for use of the Education Coordination and Grants funds "the Governor shall not allocate funds under section 123(a)(1) to such education agency, nor shall such funds be available for expenditure by the Governor". The purpose of the rule is to indicate that neither party should benefit from a failure to agree on the use of education coordination funds. The Department believes that this position is consistent with the provisions of the Act that call for joint agreement between the Governor and the State education agency and, therefore, no change is made to this section of the regulations. The Department wishes to clarify that this agreement between the Governor and the State education agency is not the same as specified in section 123(e) between the State education agency and the SDA.

A commenter requested that the barriers discussed in § 628.315(d) be defined. The barriers discussed in this section are the same barriers that are specified under title II–A and II–C of the Act or any additional barriers the Governor may specify. No changes are made to this section.

A commenter pointed out that § 628.315(d)(1)(i) of the interim final rule did not contain a citation to the provision of title II–C authorizing funds for section 123 programs. The Department agrees and the final rule contains that citation.

Some commenters inquired whether youth who are in compensatory education programs under chapter I of title I of the Elementary and Secondary Education Act of 1965, who are found to meet the eligibility requirements for free lunch under the National School Lunch Act, or who are in school-wide projects would fall within the meaning of economically disadvantaged to satisfy the requirement to serve the disadvantaged. The Department believes that they do, and has drafted the regulations to reflect the applicability of the eligibility criteria from one section or part of the Act to other parts wherever practicable. So, for example, the final rule is revised, in § 628.315(d)(1)(ii), to indicate that the criteria discussed above apply to the education coordination grant program.

A few commenters questioned whether § 628.315(d)(1)(iii) should refer directly to the non-economically disadvantaged. Additionally, the commenters expressed concern that priority for these funds should be given to in-school projects as opposed to Title III eligible participants. The interim final rule referenced non-economically disadvantaged. The final rule is revised to reflect the statutory language, although the meaning is not changed. No change is made to the regulations regarding the priority for Title III eligible participants since that priority is statutory.

Several commenters thought that the regulations should allow for direct allocation of State education coordination and grants funds to the SDA. No change is made in the regulations since the Act is specific as it relates to the Governor allocating funds to the State education agency and the State education agency being the entity that determines how and where the funds will be distributed.

Several commenters were concerned with the State matching requirements which changed the requirement from an 80 percent to a 100 percent match for Federal funds received for the State education coordination grants. These comments do not appear to have recognized the change in statutory language wrought by the amendments. Prior to the amendments, section 123(c) of the Act required only that matching funds be provided for three of the four kinds of projects specified in section 123(a). The amended law, in section 123(a)(3), requires matching funds for all the kinds of projects specified. Thus, while the matching requirement originally applied only to the kinds of projects to which 80 percent of the

funds available under section 123 were allotted, the law has been changed so that all funds are required to be matched. Similarly, the language in section 123 describing the "20%" projects has been changed. The original language was that Federal funds could be used to pay the cost of "20%" projects based on JTPA section 123(c)(2)(A). The new language is that Federal funds may be used to pay the Federal share of "20%" projects based on JTPA section 123(d)(2)(A). The final rule is revised to clarify that the matching requirement for the State is for an amount equal to the total of section 123 funds. Further, the rule clarifies that if there is no agreement between the State education agency and the administrative entity in the SDA, the matching requirement does not apply.

Services to Older Individuals

The State set-aside program for older workers was incorporated into section 204(d) of the Act. Requirements for the older workers program are set forth in § 628.320 of the interim final rule. The Governor continues to be responsible for carrying out these programs pursuant to agreements with public agencies, PIC's, SDA's, non-profits or private businesses. The Amendments require that, in entering into these agreements, the Governor is to give priority to organizations which have a record of demonstrated effectiveness in serving older individuals.

During the development of the final rule, the Older Americans Act was amended by Public Law 103–171 to revise the eligibility criteria as they pertain to older workers served in JTPA programs. It provides, as had been the case for the regular title II program (and as is reflected at § 628.605(e) of this rule), that older individuals participating in joint programs with sponsors under title V of the Older Americans Act who are eligible under title V are deemed to satisfy the requirements of section 203(a) of the Act. A new paragraph (d)(2) is added to § 628.320 to reflect this amendment. It is important to recognize that a purpose of the Older Americans Act Amendments is to enable Senior Community Service Employment Program participants who are in joint programs to participate in JTPA activities. In response to questions concerning the nature of an agreement for a joint program between JTPA and the title V program sponsor, the Department notes that, for purposes of both §§ 628.320(d)(2) and 628.605(e), the written agreement that sets forth the joint program should be structured so that both the JTPA and the title V program provide services to participants consistent with the objective of the participant and the resources of the participating program. For JTPA participants, services will be provided under the ISS.

Several commenters were concerned that the inclusion of Social Security and Supplemental Security Income in the definition of "family income" severely limits the number of older individuals who are eligible for the program. This issue is addressed under the definition of "family income" in § 626.5 of the final rule. The revised definition clarifies the treatment of Social Security income and that Supplemental Security Income is not considered in the calculation of family income. No change is made in this section of the final rule.

A few commenters recommended the removal of limitations on job search assistance in § 628.535 as they might apply to older workers. Job search assistance, including the application of the job search limitation restrictions as they apply to older workers, is covered in the discussion of the job search limitations under § 628.535 elsewhere in this preamble.

A few commenters recommended that the Department define "equitable basis" as it relates to fund availability for older worker services. The Department's view is that the definition of "equitable basis" will vary from State to State based upon local circumstances and, therefore, the Governor should determine the basis upon which funds will be distributed, taking into account the population of eligible older workers, their distribution throughout the State, and the availability of resources for this population. However, in considering the question of whether funds are distributed on an "equitable basis", the Department does not believe that all circumstances require that each SDA or area within the State receive funds under this set-aside. Each State is to develop some reasonable measure, including older individuals' share of the population or share of the labor force, in determining how these funds and services will be provided throughout the State. No change is made to the final rule.

Several commenters expressed concern that the performance standards for the older worker set-aside should be specifically tailored to the unique needs of this population. As noted earlier in the discussion of the performance standards section, the Department has convened a technical work group on the development of the new performance standards which includes representatives of older workers, and will take these and other comments under consideration in developing performance standards.

Capacity Building and Technical Assistance

The JTPA has been amended to include capacity building and technical assistance as priorities at the national, State and local levels for JTPA and other related human service programs. Section 453 of the Act calls for the creation of a national Capacity Building and Information and Dissemination Network and a Replication Grant Program. State and local priorities are established through sections 202(c)(2)(A) and 262(c)(2)(A) of the Act, which make available up to 33 percent of the 5 percent incentive funds for capacity building and technical assistance activities. Section 121(a)(3) of the Act, requires that capacity building and technical assistance plans be included in the GCSSP. Greater emphasis is placed on general technical assistance activities for the development and training of State, SDA, and service provider staff.

The majority of comments received on the interim final regulations supported the use of incentive funds for capacity building and technical assistance activities and supported the need to develop the capacity of JTPA personnel at all levels.

Commenters requested that Private Industry Councils and other job training councils, as well as those who administer JTPA, be included in capacity building activities. It was also requested that the inclusion of front-line staff be made more evident. It is the Department's intent that capacity building and technical assistance activities be targeted to all personnel who staff and administer JTPA at all level of the system. Section 628.325(c)(1) is revised to include PIC's and other councils, as well as other related human service systems provided for in section 205(a) of the Act. The word "administer" is added to the definition of capacity building at § 626.5, and "front-line" staff are included in § 628.325(c)(2)(ii).

Comments were received requesting further clarification on the use of funds for the upgrade of Management Information Systems (MIS). Section 628.325(c)(2)(iii) provides for the use of the 33 percent of the 5-percent incentive funds authorized under the JTPA amendments for the purchase of hardware and/or software only if directly related to capacity building and technical assistance activities of the National Capacity Building and Information Dissemination Network (Network). These 5-percent funds may

not be used exclusively for MIS; § 628.325(c)(2)(iii) sets forth specific guidance on the purchase of hardware/software. Funding for MIS redesign is addressed in Training and Employment Information Notice 2–92, which provides for the use of PY 1992 6-percent incentive funds for MIS upgrading and re-design.

Some commenters continued to express concern that the non-duplication provision in section 202(c)(3)(B) of the Act could seriously hamper State and local flexibility in developing products and delivering training. Section 628.325(c)(2)(iv) of the final regulations specifies that State and local capacity building efforts are to be coordinated and integrated with the National Capacity Building Information Dissemination Network (Network), pursuant to sections 202(c)(3)(B) and 262(c)(3)(B) of the Act. In order to maximize funds available, the Network will build, to the extent possible, on what already exists in the system. Through its clearinghouse, it will make information accessible to the JTPA system on current and planned Network products so that duplication of effort may be avoided as States and SDA's plan their capacity building agendas. Non-duplication should be viewed by the system as a means for maximizing scarce resources and not as limiting the flexibility of States and SDA's to tailor Network products to their own needs and/or to produce and train on similar or related products when local circumstances so dictate.

Some commenters requested that the regulations mandate that the 33 percent of 5 percent incentive grant funds available to the States for capacity building be passed to the SDA level for capacity building and technical assistance activities. The final regulations continue to strongly encourage Governors to use these funds for the development of staff capabilities at all levels, and particularly for front-line staff, through a comprehensive capacity building and technical assistance strategy. While neither the Act nor the regulations require that funds be passed directly to the SDA's, the final regulations, at § 628.325(c)(2)(ii), offer a variety of State options for ensuring coverage of SDA and front-line staff. Section 628.205 encourages Governors to share capacity building plans in advance with SDA's and requires that capacity building plans be included in the GCSSP.

More specific information was requested as to what related human service programs are covered under section 453 of the Act. Section 628.325 (c)(1) and (d) includes those programs listed in section 205(a) of the Act among those human service programs.

Several commenters requested clarification on the allowable uses for incentive funds by SDA's, specifically asking if there is any limit on the amount of incentive funds used for capacity building and if incentive funds can be used solely for administration. One commenter suggested a maximum limit of 30% on the use of incentive funds for administration in order to insure that their primary use focuses on training and capacity building. The Department intends to allow the SDA's flexibility in determining how their incentive funds are best utilized. Section 627.440(c)(2) specifies that incentive funds may be used without regard to cost limitations. However, a new paragraph (5) is added to § 628.325(b) specifying that SDA's should use incentive funds for capacity building, technical assistance and services to eligible participants. The former paragraphs (3) and (6) in § 628.325(b) which dealt with this topic are removed; the remaining paragraphs are redesignated accordingly. Further clarification on SDA capacity building responsibilities is also found in § 628.420, the Job Training Plan.

A technical correction is made at § 628.325(c)(1) to include the citation of section 262(c)(1)(B) of the Act.

SDA Designation Process

The interim final regulations, at § 628.405, clarified the SDA designation process. The language in the supplementary information section indicated that SDA designations are to occur every 2 years, consistent with the preparation of the 2-year GCSSP and the SDA job training plan. This information is incorrect and will be addressed in the context of discussing the comments received in this area.

The regulations also: established minimum criteria to be used by the Governor in considering discretionary SDA designation requests under the provisions at section 101(a)(4)(B) of the Act; provided clarification on the handling of competing SDA designation requests under section 101(a)(4)(A) of the Act; and defined the terms "substantial portion" and "substantial part" of a labor market area for the purposes of SDA designations under section 101(a)(4) (A)(ii) and (B) of the Act.

A few commenters noted that there was nothing at section 101 of the Act nor § 628.405(a) that indicates that SDA designations are required to occur every two years, as indicated in the preamble of the interim final rule. The concerns expressed in the comments were that to mandate that SDA's be designated every two years would be disruptive and would serve to increase the number of SDA's rather than decrease them as intended.

The commenters are correct that there is nothing in the Act nor the regulations that requires that SDA's be designated by the Governor every two years. The preamble did not clearly convey the intent of the interim final regulations. The intent of the preamble was to indicate that SDA designations, when they occurred, were to coincide with the 2-year cycle for the GCSSP and the local job training plan. This was to clarify that SDA designations could not be made for an off year of a 2-year period covered by the approved GCSSP and local job training plans. Section 628.405 is amended to more clearly convey this requirement.

A commenter indicated that SDA designation, under § 628.405(a)(3) of the interim final rule, should not be required for a previously designated SDA which has complied with all of the JTPA mandates and has successfully operated good training programs.

There is nothing in the Act or interim final regulations that requires existing SDA's to formally apply for designation or redesignation by the Governor when such designations are to be made within the State. Section 628.405(a)(3) only indicates that the Governor should address the treatment of existing SDA's in the procedures developed to govern the SDA designation process within the State. Thus, the Governor may choose to require reapplication for each designation cycle or to permit existing SDA's to continue without the need for a new application. Section 628.405(a)(2) of the interim final regulations is redesignated, in part, as (a)(3), and is amended to clarify this issue.

A few commenters took exception to the requirement that the Governor establish standards by which to evaluate discretionary SDA designation requests under section 101(a)(4)(B) of the Act which, at a minimum, must include the criteria set forth at § 628.405(d). These requirements are viewed as overly prescriptive, limiting the Governor's discretion in making SDA designations and establishing a higher standard than that provided for in the Act.

The Department believes that neither the provisions of the Act nor the interim final regulations, at § 628.405(d), inhibit the Governor from making discretionary SDA designations, pursuant to section 101(a)(4)(B) of the Act. The Department does not believe that the regulatory provisions are overly prescriptive in establishing some uniform minimum standards for the Governor to evaluate

such designation requests. With approximately one-third of the over 640 current SDA's being discretionary designations, it is necessary to ensure the viability of such SDA's to adequately administer and promote effective delivery of JTPA services to a substantial portion of the eligible population in the area to be served. The regulations simply formalize the minimum standards that Governors would need to consider and, in most instances, probably already have established, in making discretionary SDA designations consistent with the provisions at section 101 of the Act. The Department believes that the regulations in this area are consistent with the provisions at section 101 of the Act and the Secretary's authority to promulgate regulations to implement the provisions of the Act. No change is made to the final regulations.

Several commenters took exception to defining "substantial part" and "substantial portion" of a labor market area (LMA) for the purposes of SDA designations under section 101(a)(4)(A)(ii) and (B) of the Act, respectively. These commenters argue that the requirement that the prospective SDA serve 10 percent of the population of an LMA is arbitrary, artificial and exceeds the language in the Act, unduly limiting the Governor's flexibility to determine SDA's for the State. The commenters recommended that the 10-percent provision be withdrawn from the final rule. A few of the commenters suggested including a "grandfather" provision for existing SDA's in the regulations, if the 10-percent provision is not removed in the final rule.

The Act provides that prospective entities seeking SDA status under the provisions of section 101(a)(4)(A)(ii) and (B) of the Act serve a substantial portion/part of an LMA as a statutory criteria for designation. In the past, the Department has deferred to the Governor's definition of "substantial" for the purposes of such designations, which has resulted in a wide range of thresholds being established, from levels significantly below the 10 percent provided for in the regulations, to a majority of an LMA. The Department reached the 10-percent figure taking into consideration the need for a rational figure which would assist the Governors in the SDA designation process and still ensure the statutory mandate for serving a substantial portion or part of an LMA, as appropriate. The regulations still provide that the Governor defines these terms, with the 10 percent floor as a minimum requirement. The Department believes that the 10-percent figure is reasonable and consistent with the provisions of the Act and the Secretary's authority to promulgate regulations implementing the Act, while still maintaining the Governor's flexibility in designating SDA's. No change is made to the final rule.

On the suggestion that existing SDA's be "grandfathered" notwithstanding the 10-percent requirement, part 627, Subpart I, Transition Provisions, of the interim final rule addresses this issue. The regulation, at § 627.904(l), indicates that, at the Governor's discretion, SDA's designated prior to July 1, 1992, need not be subject to the provisions at § 628.405. The Department does not believe that further clarification is needed. No change is made to the final rule.

Private Industry Council

Section 628.410 of the interim final rule set forth requirements relating to the establishment and functioning of the PIC. Comments on the provisions of this section fell mainly into three areas: PIC recertification, joint agreement on the plan for Wagner-Peyser activities of the employment service and PIC representation.

A number of commenters questioned the requirement of § 628.410(a)(2) that the Governor recertify the PIC biennially, one year prior to the date of submission of the job training plan. The commenters indicated that this requirement was an undue administrative burden and appeared to go beyond the provisions of section 102(g) of the Act, which states: "The Governor shall certify a private industry council if the Governor determines that its composition and appointments are consistent with this subsection." In response to this concern, § 628.410(a)(2) is amended to require the Governor to review the PIC certification biennially rather than to formally recertify the PIC. The review process is intended to afford the Governor a continuing role in ensuring that the PIC is an effective local policy making body. The requirements specified in § 628.410(a)(3) encompass three areas: the PIC membership and the nomination process, the PIC/chief elected official agreement, and the responsibilities of the PIC to carry out its role.

Several commenters indicated that the requirement for a new PIC/CEO agreement was beyond the requirements of the Act and was potentially disruptive of agreements and arrangements that had been carefully and delicately worked out at the inception of JTPA. There is no requirement to negotiate or renegotiate an otherwise satisfactory agreement which is in place. The regulations only require the Governor to review the sufficiency of the PIC/CEO agreement in terms of the requirements of the Act.

In response to comments on § 628.410(a)(3) of the interim final rule which requested clarification of the meaning of paragraph (a)(3)(iv), this paragraph is removed in the final rule, since it is largely redundant of the contents of the PIC/CEO agreement and the material that follows in paragraph (b) which the Governor may review in the course of normal oversight.

A few commenters asked for clarification on the components of the Wagner-Peyser plan which were applicable to SDA's. The SESA agreement requirements are set forth in the Wagner-Peyser Act, at section 8(b)(1). These requirements generally deal with employment service operational plans for carrying out the provisions of the Wagner-Peyser Act which must be developed jointly with the PIC and local chief elected official.

Regarding PIC membership selection, a few comments touched on the selection process for representatives of organized labor. One comment asked that the regulations define "labor federation" to mean the AFL–CIO at the State and local levels and that a process be instituted for the Chief Elected Official (CEO) to ensure PIC representation by the local AFL–CIO rather than by individual workers. As provided in section 102(c)(3) of the Act, CEO's are to consult recognized State and local labor federations for recommendations for the labor representatives to the PIC and not an individual labor organization. For this reason, a description of the nomination process is specifically required to be included in the PIC certification to be reviewed by the Governor. The Department agrees, however, that there is a need for clarification as to what constitutes a labor federation and is adding language in the final rule, at § 628.410(a)(3), to indicate that a labor federation is an alliance of two or more labor unions, an example of which is the AFL–CIO.

With respect to PIC representation in general, several commenters stressed the importance of ensuring that the nomination process is opened up to balance important interests in the community, including the interests of older individuals and women. The Department recognizes the importance of balanced demographic and community interest representation and sensitivity to the diverse populations being served. This sensitivity is best displayed at the local level where the composition of the community is known. While the Department strongly

encourages CEO's and PIC's to make every effort to assure that PIC membership is broadly representative of the community, the Department does not believe it is appropriate to require this result through national rules. Thus, the Department has decided not to impose membership requirements beyond those enumerated in section 102 of the Act. In communities with public housing agencies, given the similarities in target populations, the Department does, however, encourage chief elected officials to include such representation in their PIC membership under the category of "public assistance agency".

A few commenters were concerned that appointing representatives of certain kinds of organizations to the PIC would represent an inherent conflict of interest. Conflict of interest rules for PIC members are discussed in Procurement (§ 627.420(c)(4)).

Selection of SDA Grant Recipient and Administrative Entity

One commenter indicated that the intent of this section was unclear. The Department believes that the lack of clarity may pertain to the kinds of criteria that the Governor may establish that would affect the PIC's and CEO's selection of a grant recipient and administrative entity. The Act, at section 103(b)(1)(B), specifies entities that may be selected as grant recipient and administrative entity, which may be the PIC, a unit of local government or a non-profit organization. While the Governor may establish criteria for the selection of grant recipients and administrative entities, the criteria may not specifically exclude a type of entity specified in the Act from being selected.

Job Training Plan

Sections 628.420 through 628.430 deal with the submission, review and approval of the job training plan. There were a few comments regarding the contents of the job training plan which are addressed in § 628.420(b)(1), through a reference to the requirements of section 104(b) of the Act. There were requests for certain specific references in the text of the regulation. One comment requested that the requirements of the NEW Act be specifically referenced. As previously discussed in this supplementary information section, the Department agrees and has added a reference to the requirements of section 104(b)(7) in § 628.420(b)(1). Another commenter requested that a specific reference be made to consultation with public housing agencies. While these agencies are not specifically referenced in section 104 of the Act, they are included among those agencies with which the SDA is to develop the coordination and linkage arrangements that would be described pursuant to section 104(b)(4) of the Act.

A few commenters raised concerns about the requirement in paragraph (e) of § 628.420 that modifications are to be submitted jointly by the PIC and chief elected officials (CEO's) to the Governor. These commenters appear to be confusing modifications to the SDA job training plan with contract modifications. The commenters stated that the procurement regulations in § 627.420 require that every contract change order, such as a decrease of one participant, necessitates a contract modification. The procurement process requirements in § 627.420 do not apply to the plan and plan modification process, and § 628.420(e) addresses the requirements for the modification of the job training plan, not contract modifications. Language is added to paragraph (e) to clarify that a "major" modification is to be specified by the Governor. In so specifying, the Department suggests that the Governor consider conditions which result in a variance of 20 percent from the approved plan in the budget, level of participant services, number of participants served, participant outcomes, or other core elements.

Further, there was an inadvertent oversight in the interim final rule in § 628.420(d) and (e), concerning the submission of local plans or plan modifications to the Governor. The interim final rule indicated that the plan or plan modifications must be jointly submitted but omitted the statutory requirement that such plans or plan modifications also must be jointly approved as a condition for submittal to the Governor. Paragraphs (d) and (e) of § 628.420 are amended to more accurately reflect the statutory provisions of section 103(d) of the Act.

One commenter requested that the time limit provided in § 628.426(b) for chief elected officials and the PIC to correct any deficiencies the Governor identifies in disapproving a job training plan be changed from 20 days to 30 days to allow SDA's adequate time. This change is incorporated into the final rule.

Finally, a commenter requested that the final rule clarify that the references in the Act and regulations refer to "working days". In fact, this is not the case and the references, as is the practice, refer to consecutive calendar days. No change is made in the final rule.

Subpart E—Program Design Requirements for Programs Under Title II of the Job Training Partnership Act

In response to a few comments, the final rule is revised in a few introductory statements to clarify that references to title I refer to programs undertaken pursuant to sections 121 or 123.

General Program Design Requirement

The Act contains significant requirements in the front-end operations for most SDA's, which will cause major alterations in the intake structure and will necessitate revisions in the appraisal of each participant's capabilities, needs, and occupational goals. In the final regulations, the Department has provided necessary direction based on the Amendments and has clarified and highlighted significant changes from the "old" statute.

Eligibility Determination and Intake

Two major criteria must be considered in the process of determining which applicants are eligible for title II JTPA program services. As set forth in § 628.505, the first criterion is age. The second is economic disadvantage. The standard for determining economic disadvantage will be income as described in the annual Department of Health and Human Services poverty guidelines. The use of these guidelines provides a standardized income determination across federally funded programs. The Department's approach to the eligibility determination process has been to attempt to minimize the amount of documentation necessary to establish an individual's eligibility for services, while maintaining the necessary safeguards to prevent misuse of program funds.

A number of commenters encouraged a streamlining of the eligibility documentation process, including use of self-attestation. Several requested guidance on what documentation would be required for barriers. The Department has issued, in February 1993, and provided training on an eligibility documentation TAG to be used by SDA's in the eligibility determination process. This should provide clarification of these issues. The procedures in this title II, Eligibility Documentation TAG, if followed by the SDA's, will protect them from audit disallowances based on inadequate documentation. In response to several comments that the Department should stick by its guidance, the final rule clarifies the intent of the interim final rule that when it is determined that the

State, SDA or service provider followed the Department's written guidance, the Grant Officer will not disallow costs related to required documentation of an individual's eligibility.

Section 628.510 describes the requirements for intake, targeting and referral of applicants. During the intake process, personal data on individuals are collected and a preliminary determination regarding suitability for title II services is made. A number of commenters expressed the need for clarification of the suitability issue. Suitability for program participation is a determination, based on preliminary information, of which eligible applicants should be considered for JTPA program services. This determination is made against the backdrop of the limited availability of JTPA resources and services and the practical necessity that the JTPA program must decide which individuals fall within the 5 to 10 percent of the eligible population that can be served. It includes a determination whether an individual falls within a category targeted for service by virtue of having a "barrier" to employment and whether there are other programs and services reasonably available to an individual within the community. The JTPA title II program is not intended or structured to remove all barriers to employment that applicants for services may have. Therefore, the suitability determination also should consider which eligible applicants, with the provision of locally available supportive services, can best be served and benefit from JTPA participation by acquisition of educational and occupational skills or competencies and eventual employment. The regulations provide that some limited assessment activities may be undertaken, the results of which may be used in connection with a determination of suitability. A determination that an individual may be eligible but not suitable results in referrals to other sources of assistance, provision of information on other programs, or in the case of a service provider, in referral to the SDA for further consideration. In making suitability determinations, SDA's should keep in mind their obligations under applicable civil rights and equal opportunity laws. SDA's should consider advising applicants of the process and possible results of intake, assessment and suitability determinations and, particularly, that not all eligible applicants can be served.

In order to focus program services on harder to serve individuals, not less than 65 percent of participants must have one or more barriers to employment, as specified at section 203(b) of the Act. SDA's may also specify an additional barrier for each of the title II–A and II–C programs. An example of an appropriate "additional barrier" under section 203(b)(7) of the Act was requested. In response to this request, the Department is providing several examples, however, SDA's are not limited to these and are encouraged to develop "additional barrier" guidelines tailored to local population and labor market needs. For communities with public housing, the Department believes that "public housing assistance recipients" who are otherwise income eligible would constitute an appropriate "additional barrier". An employment-authorized refugee might be included, as well as a displaced homemaker, or substance abuser. Finally, the Department counsels that a member of a group protected under the civil rights statutes may not be designated as having a barrier to employment solely on the basis of the characteristics that cause them to fall under the civil rights legislation. So, for example, a racial group could not be designated under the additional barrier provisions.

Several commenters requested clarification of the documentation requirements for referrals in § 628.510(d). The Department describes the minimum required documentation at § 628.510(d) and at § 628.530(c). The Department expects that SDA's will develop standardized information on programs and services available in the community. This information may be provided in written form to the eligible applicant. A record of the referral will be maintained and may take the form of an incomplete ISS. No further followup is required beyond referral. Section 628.510(d) is revised to incorporate this principle. The idea is that the SDA must assume some limited responsibility to eligible applicants who come for services even though the Act recognizes that not all will be served. The SDA should be in a better position than an individual applicant to be aware of the services available within the community and to make referrals so that the applicant can benefit from these other sources. In part, this is a principle behind recent initiatives by States, SDA's and the Department to facilitate a concept of "one-stop" service.

In addition, § 628.510(d) is amended to specifically mention referrals to Job Corps to parallel the amendment to § 628.803(d)(2). This change is made to foster JTPA/Job Corps coordination.

Section 628.510(e) describes the requirement for service providers to refer eligible applicants or participants who cannot be served by its program back to the SDA for further assessment, if necessary, and suitable referral to other appropriate programs. Several commenters questioned whether there is a requirement for centralized intake. There is no such requirement. The requirement is that the SDA put in place a system that works independently of an individual service provider. This "system" would also cover situations described by commenters in which the SDA administrative entity does not perform intake. In other words, an SDA must have some mechanism by which an eligible applicant or participant can be considered for enrollment in all of the services available through the SDA, not just those of a single service provider. The Department believes that this is a program design issue for local discretion and that there will be a number of effective approaches to meet these requirements. The intent of the regulation is simply to assure that participants will be exposed to the full range of available services and that they will have a fair opportunity to receive services appropriate to their individual needs.

The States and/or SDA's will establish procedures to ensure compliance with the targeting requirements of sections 203 and 263 of the Act and to determine actions to address noncompliance with the requirements. Many commenters questioned how compliance would be calculated. Some noted that a strict reading of the Act would provide that any "participant" (i.e., any individual who has been determined eligible and received a service, including objective assessment) could be included in the calculation to meet the targeting requirement. Others observed that while assessment was an important activity, it did not necessarily constitute a training or employment service that would result in a measurable outcome of the effectiveness of the program. In considering the comments, the Department recognizes that, at the suggestion of individuals identifying implementation issues, it was determined that only individuals enrolled in an activity subsequent to objective assessment would be included in performance standards calculations. The rationale for that decision was that many individuals had not made a final decision to participate in the program and have dropped out before any meaningful intervention. Therefore, for consistency, the Department has determined that the 65-percent requirement also is to be calculated on those participants who receive services or training subsequent to the objective

assessment. Section 628.510 is revised to add a new paragraph (f)(2) to this effect.

Objective Assessment

Objective assessment should be a continuous, customer-centered and flexible process. The objective assessment should not be viewed as a discrete activity that begins and ends early in the stages of program participation, but rather as one that will continue throughout participation in JTPA.

Several comments received on the front-end design of the JTPA program discussed the assessment process. All supported the concept and the intent of individualized program services. A few commenters expressed concern over staff development needs for implementing assessment. Many commenters requested guidance in the development of assessment and service strategies. While the Department expects that States and SDA's will retain authority for program design, technical assistance has and will continue to be provided on assessment and development of the ISS. The Department encourages use of funds for the capacity building of staff (see § 628.325), including staff training in objective assessment techniques; however, the Department declines to establish credentialing standards as one commenter suggested. The Department believes that staffing and standards should be a State and local decision.

A few commenters addressed confidentiality issues arising in the intake, assessment and referral processes. The same kinds of concerns over disclosure of information were expressed in connection with the discussion of § 627.463. The Department has not addressed confidentiality in § 627.515 because confidentiality issues are not new. The Department thinks that traditional standards of professional conduct on confidentiality issues should be continued. Further, the Department expects that protections against the disclosure of information that would constitute a clearly unwarranted invasion of personal privacy, as permitted by section 165(a)(4)(B)(i) of the Act, will protect the confidentiality of customer information.

A number of commenters expressed confusion over the determination of when an applicant becomes a participant, how much assessment could be provided at the intake/ eligibility stage prior to enrollment of an eligible applicant and to which cost category this would be charged. Costs incurred on behalf of an applicant, including intake, eligibility and suitability determination (which may include some limited assessment of an applicant), and any assessment necessary to facilitate the eligibility determination, consistent with the provisions of § 627.440(d)(3)(i) are to be charged to the training-related and supportive services cost category. Once an applicant is determined to be eligible and the decision made to enroll the applicant, a full objective assessment may begin and the applicant may receive other program services. As specified in § 627.440(d)(1)(i), assessment at this stage may be charged to the direct training cost category. Receipt of objective assessment or other services would confer participant status consistent with the definition of participant in section 4(37) of the Act. The Department believes that the preoccupation with participant status may be misplaced because the principal issue of program credit has been addressed in the context of when the performance standards are to be applied.

The Department expects assessment of eligible applicants to be used only in those cases when an eligible applicant's suitability for enrollment is unclear. While the regulations afford an opportunity to charge the costs of preliminary assessment functions to the training-related and supportive services cost category to aid in the determination of an applicant's suitability, the Department expects the restriction on the cost categories to act as a natural control on SDA's while still allowing the flexibility for individual decisions. The Department would like to emphasize that the limited availability of funds will restrict over-use of preliminary assessment as part of the decision to enroll. SDA's are expected to finance intensive services expected to enable participants to complete successfully the longer term JTPA service strategies within this cost category.

Section 628.515 sets forth the requirements of the objective assessment. The scope of the objective assessment should not be limited to only services or training programs already available in an SDA.

A few commenters questioned whether basic skills evaluation was required as part of the objective assessment. The Department intends the evaluation to be of both basic and occupational skills. The definition of "objective assessment" in § 628.515(b)(1) is revised, therefore, to include basic as well as occupational skills evaluation.

The objective assessment is ongoing and should not be viewed as a one-time event. It should be a multi-faceted process which includes a full array of options including items such as structured interviews, paper and pencil tests, performance tests, behavioral observations, interest inventories, career guidance instruments, aptitude tests, and basic skills tests. From these options, and others, assessment staff may select the most appropriate tools for each participant to measure skills, abilities, aptitudes, interests, supportive service and financial needs, and to counsel participants on how their assessment results relate to local labor market demands.

SDA's are strongly encouraged to prudently select appropriate measuring tools that will provide necessary information for the reasonable development of an individual service strategy leading to a realistic employment goal. JTPA resources are limited and JTPA is not an entitlement program. The Department expects SDA's to develop practical applications for career counseling and assessments for basic skills and occupational training.

The objective assessment process should be sensitive to the testing and evaluation environment and the comfort and confidence level of the participant. The temptation to over-test or over-evaluate, providing excess information for which there is no immediate application, does not serve the customer's best interest, is detrimental to the customer/ counselor relationship, and is costly to the SDA. The objective assessment is to be revisited regularly and the resulting information used to amend the ISS, as appropriate, when additional needs are identified or goals achieved.

Assessments recently conducted by other human service programs or schools are viable options and their use is encouraged, where appropriate, rather than requiring the customer to undergo additional assessments that duplicate information already obtained.

Finally, the Department notes that the objective assessment process for title II–B may be different in scope than that for the regular title II–A and II–C program, as indicated in § 628.515(b)(2). This may also be the case for limited function programs (such as literacy programs) mounted under section 123, although this is clearly an exception to the normal expectation in conducting an assessment.

Individual Service Strategy

Section 628.520 establishes the requirements for the Individual Service Strategy (ISS). The ISS is an individual

plan that is developed based on information obtained through the objective assessment. It is the framework within which decisions regarding individual participants are recorded. It should be considered a living document that reflects decisions concerning the appropriate mix and sequence of services to be provided leading to, and including, a realistic employment goal. Several commenters requested clarification of the outcomes to be sought in the development of the ISS for youth. The Department agrees that there is a need to focus on youth returning to or remaining in school and, thus, that the ISS should focus more on education as it relates to a long term career. In title II–B and II–C, the employment goal should be interpreted broadly for those individuals returning to school and may reflect long-term career goals.

A few commenters asked for clarification of what had to be listed in the ISS. The ISS should briefly note any need for financial resources or supportive services and record the amount of each. The expected outcome of each activity should be indicated with a notation of the provision and schedule for each. Referral to other programs, and referral out of title II must be noted on the ISS. The rationale or justification for other decisions may be referenced in the ISS, but need not be recorded there. The Department provides further clarification of the use of the ISS for recording referrals out of title II by revising § 628.530(c), as was requested by several commenters. This section now states that further tracking or follow-up is not required for referrals out of title II. This section is also revised to correct language in the interim final regulations that indicated referrals out of title II would not be calculated in performance standards only if an ISS had not been completed. Since, as commenters noted, an ISS is to be developed for each participant, this section now allows recording the referral in a partial ISS without any effect on performance standards.

Several commenters indicated confusion over counseling and the development of the job goal in the ISS. The provisions of this section reflect the need for program-related application of career counseling, but the Department cautions program operators to prudently provide career counseling related to the realistic goals of the JTPA program. While the objective assessment/individual service strategy process is customer-centered, JTPA services are expected to guide participants toward realistic employment goals for which training and job demand are available in the community. Pure career counseling for its own sake should be left to other, more appropriate, sources. Development of a final employment goal may be delayed where the objective assessment indicates a need for further career exploration or assessment. In this case, a career cluster should temporarily be indicated in place of the employment goal. The ISS should be revised to reflect the employment goal prior to the start of specific occupational skills training. The employment goal may be revised if the continuing objective assessment indicates a need to do so.

A number of comments were received concerning participant signatures on the ISS. This requirement was perceived as an unnecessary administrative burden. Section 628.520(c) is revised to indicate that there is not a requirement for a participant signature. However, the decisions reflected in the service strategy about goals, objectives and services to be provided are to be made in partnership with the participant and are to be determined in conformance with applicable civil rights provisions. Participant signatures on the ISS may be requested, but are not required to indicate the joint development of the document.

The Department encourages communication with participants and reminds program operators, especially program monitors and auditors, that the intent of the ISS is to be a program tool and not a compliance document that forms the basis for cost disallowance. The Department does not doubt that participant records, including the ISS, will be reviewed to determine whether SDA's and others have adhered to certain requirements of the Act. This is unavoidable. However, for the ISS to have the anticipated value as a program tool, it must not be developed and used with compliance in mind, but rather with the needs of the customer as its focus. One commenter suggested that if documentation is required, *e.g.*, to document a payment decision, that it be recorded elsewhere in the participant record so that the ISS and compliance documentation can be kept separate. While somewhat artificial, if this concept helps, the Department has no objection to using it. Ultimately, however, the decision on how much detailed information to record on the ISS is one for States and SDA's.

The final rule is revised by adding a new paragraph (h) in § 628.520 to emphasize that the ISS is a working record of progress and references to "documentation" are revised to read "record."

The ISS, to be effective, must be regularly reviewed and adjusted to reflect the progress and to meet the continuing needs of each participant. The ISS will serve as the basis for the entire case management strategy. Case management is an allowable direct training activity and the Department encourages its use as an effective strategy for providing quality services to the participant.

A few commenters indicated confusion over the application of case management to the JTPA program. The Department encourages application of case management principles to participant services. In section 4(32) of the Act, the term case management is defined to mean the provision of a customer-centered approach in the delivery of services, designed to prepare and coordinate comprehensive employment plans to ensure access to the necessary training and supportive services, and to provide job and career counseling during program participation and after job placement. The Department expects SDA's to make every reasonable effort to provide the services and training indicated by the assessment and ISS and, where possible, to apply standard case management principles. The Department recognizes, however, that JTPA is not an entitlement program and that not all services and training will be available regardless of the level of coordination in an area. Case management is an administrative management tool, not an individual service to be delivered to participants. There is no change in the final rule.

A few commenters expressed concern over the ability to provide all services indicated by the objective assessment and the ISS. Section 628.520(e) recognizes that an SDA may not always be able to provide the full array of services indicated by the objective assessment and recorded in the ISS. In arranging for the mix and sequence of appropriate services, it is fully expected that SDA's will refer participants to other programs for certain specified activities as part of the JTPA service strategy. In those cases, particularly in rural areas, where services required are indicated on the ISS and not available from any source in the SDA, such information is to be recorded in the ISS and an alternate plan developed which may include referral to another program. SDA's are expected to make every reasonable effort to make available the recommended training or services to each participant; however, consistent with § 628.525, it is understood that the objective assessment and ISS do not give legal or entitlement rights to participants for services. JTPA is not an

entitlement program and available resources are limited.

Some commenters thought that language in the preamble to the interim final regulations authorized States and SDA's not to serve the disabled or other hard-to-serve persons, if they needed substantial supportive services. The Department acknowledges that it may have inadvertently suggested that an individual, with excessive supportive service needs, such as a person with a disability, could automatically be referred out of the program to other sources. This is not the case. Such decisions must be made on the basis of the individual's and the program's circumstances. While JTPA is not required to directly serve every person, including every person with a disability, it is intended to focus more on the hard-to-serve. The fact that an individual may be difficult or costly to serve should not, in itself, preclude serving that person.

Consistent with § 628.520(f), service providers and contractors may conduct the objective assessment and develop the ISS. It is the responsibility of the SDA administrative entity to ensure that the objective assessment and the development of the ISS reflect the customer-centered approach required by law are provided to each participant whether they are provided in-house or by service providers.

Limitations

In response to comments on the provisions of § 628.510 and § 628.530, § 628.525 is also revised for further clarity to indicate that neither eligibility nor participation create a right to JTPA services.

Referrals of Eligible Applicants and Participants to Other Programs

The final regulations further clarify the subject of referrals of both eligible applicants and participants due to confusion expressed by a number of commenters. The regulations, at § 628.510(d) and at § 628.530(c), specify the requirements for referral of eligible applicants and participants for whom available title II services are not deemed suitable or adequate to appropriate human service programs in the community. Section 628.510(d) deals with the situation in which an eligible applicant is referred to non-title II services during the intake process. Section 628.530 refers to referrals of participants, those individuals who have been determined to be eligible and have begun to receive objective assessment or other services. In the final regulations, both provisions are revised for clarity and to reduce the burden of documenting the referrals. Section 628.510(d) allows the SDA to conduct limited assessment of eligible applicants as a part of a determination of suitability, before they are enrolled as participants. The purpose of this pre-participation assessment is to enable SDA's to make more precise judgments as to the suitability of the applicant for participation in JTPA and/or additional services.

The responsibility of the SDA at this point in the intake process is to assure that eligible applicants not suitable for title II participation are "provided information on the full array of applicable or appropriate services that are available." (Section 204(a)(2)(A) of the Act) and that necessary arrangements are made for individuals to make contact with those services.

Section 628.530(c) addresses referral of participants out of title II services. A number of commenters indicated concern over burdensome paperwork requirements for referral of participants to other than title II programs. The Department has addressed these concerns by amending § 628.320(c) to permit referral decisions for participants with whom there will be no continuing relationship to be recorded in a partial ISS. No further tracking of such referred participants is required. Of course, where there will be a continuing relationship with the referred participant, § 628.530(a) provides that the referral decision should be recorded in the ISS and that the participant's progress should be tracked.

In the case of service providers who discover that an eligible applicant cannot be served by its program, § 628.510(e) requires that service providers refer such individuals to the SDA for further assessment and referral.

Clarification of referral responsibilities was requested by a number of commenters. In addition to the above explanations, § 628.510(d) and § 628.530(c) are revised to specify that no follow-up is required for referrals of eligible applicants or participants with whom there will not be a continuing relationship. Further, the Department wishes to point out that either an applicant or a participant may be referred out of JTPA at any time, if warranted by customer need or preference. Some commenters seemed to think that both an objective assessment and ISS "must be completed" prior to referral outside the program. Since both assessment and the ISS are presumed to be continually reviewed and evolving during participation, this assumption is not warranted.

Job Search Limitations

A fundamental change in section 204(c)(2) of the Act regarding program design is the requirement that job search, job clubs, and work experience activities be accompanied by other services that increase a participant's educational and occupational skills. This change reflects evidence that, in some cases, suggests that quick turnaround placement programs have minimal long-term impact when provided in isolation from other more comprehensive and intensive services. The Department's Inspector General, in a 1988 report, concluded that the number of JTPA participants on public assistance was only slightly reduced after completion of JTPA programs. On the other hand, The National JTPA Study found a 39% earnings gain for adult women from the provision of stand alone job search services. This new limitation reflects an overall thrust of JTPA to provide quality services to participants. For example, short-term job search assistance alone might result in a job placement for low-skilled individuals, but job retention is not likely without concomitant services aimed at increasing participants' needed basic or occupational skills. Accordingly, § 628.535 codifies section 204(c)(2)(B) of the Act which limits the provision of stand-alone job search assistance, job search skills training, and job club activities to title II participants. "Job search assistance" itself is defined in § 626.5.

Comments generally addressed two issues: Interfacing with the Employment Service (ES), and the preference of older individuals for immediate job placement. With regard to the Employment Service, many questioned the ability of the local ES office to provide adequate services to JTPA participants. They were concerned that ES may lack in-house expertise to provide sufficient assistance for groups with special needs. Citing the provisions in the Act governing the determination of duplicative services, several commenters believed that the ability of the ES office to provide assistance to special needs groups should be a criterion for this determination. Others pointed out that, since job search activities are a critical part of any ISS, and service providers have already established successful networks of employer contacts, ES offices should not be the presumptive deliverer for providing adequate job search activities for all participants. These commenters suggested that § 628.535(d) be either deleted or revised to permit SDA's to determine whether to

use the ES to provide job search services.

On the other hand, several commenters stated that allowing SDA's to determine unilaterally whether adequate job search assistance is available through the local ES office (§ 628.535(c)(2)) defeats one of the basic goals of the Amendments: To focus JTPA on providing more training and less stand-alone job placement. Unless there is a mechanism for ES input into the determination as to whether job search services are available, the concern is that an SDA could simply assert that services are not available to avoid coordinating with the ES, leading to duplication. One suggestion was that the Governor decide the criteria for the availability of job search assistance. Another commenter stated that any requirement to document that job search services are unavailable from the ES for each participant or training program should be done only once per program year or Job Training Plan cycle.

Another commenter pointed out that because job search assistance was defined as a service "designed to give a participant skills in acquiring full-time employment," and the local job service office was considered the appropriate purveyor of these skills (§ 628.535(d)), this provision should be removed because ES offices may not always be able to provide such services.

The Department decided not to remove § 628.535(d) because it interprets section 204(c)(2)(B)(ii) of the Act to accord the employment service a special status in terms of providing job search. Also, this provision of the Act is not substantially different from the provisions of sections 107 and 141 of the Act which prohibit duplication of services. It remains to be determined whether job search assistance is universally available within each community from the Employment Service. The SDA may look at whether local employment service resources are sufficient to provide the job search assistance for all potential JTPA referrals.

The final rule, at § 628.535(d), is amended to indicate that a determination is to be made by the SDA in active consultation with the employment service and other public agencies. These determinations must be documented in the SDA's job training plan since the employment service is on the PIC and coordination with the employment service is among the topics to be included in the plan. Standardized inquiries regarding local job search assistance availability from the employment service may be developed by the Governor in consultation with the State ES Director.

A number of commenters representing older workers recommended either a waiver of the stand-alone job search limitations for this population or a provision allowing the Governor to request a waiver when sufficient evidence demonstrates that the interests of older workers would not be well served by these limitations. These commenters recognized the priority placed on training for younger individuals but expressed doubts that career training was a realistic and relevant goal for older workers who, generally are not attracted to long-term assistance that mandates skills training, who do not thrive in classroom training designed for youth and young adults, and who do not tend to seek assistance from the ES or other public agency environments. For these reasons, several commenters asked that older workers, or the older worker set-aside program, be exempted from this section altogether and that job search assistance be a service strategy for this population without justification in the ISS.

The Department considered these comments carefully and has decided that, like all title II–A participants, older worker participants require assessment and need a justification in the ISS for stand-alone job search activities. However, a new § 628.535(e) is added in the final regulations to recognize the preference of older individuals for immediate job placement and to provide some flexibility in recognition of the special characteristics of older workers. The Department's view is that this provision should not establish a routine practice to avoid the provision of needed training services. The intent of the JTPA program remains to provide needed services to the hard to serve, including older workers.

A few commenters noted an ambiguity in the interim final regulations, that § 628.804(d) and (e) limit the provision of preemployment and work maturity skills training and work experience, in addition to job search assistance, unless they are accompanied by additional services; while § 628.535(b)(2) states, as an example, that work experience can be combined with job search training. Accordingly, § 628.535(b)(2) is revised to specifically exclude this example as well as other services which may not be used to meet the combination requirement. Additional services which may be provided in conjunction with job search may include the training services specified in JTPA section 204(b)(1), except stand-alone skill assessment, counseling, work experience and case management, and the direct training services listed in 264(b) of the Act excluding tutoring, stand-alone skill assessment, counseling, work experience and case management. Commenters also pointed out that the title II–C program does not contain an "exceptions" provision to this requirement as section 204(c)(2)(B)(ii) of the Act does for the title II–A program. To address this inconsistency, § 628.535(c) is amended to state that the exceptions are not applicable to title II–C. On the other hand, it is important to note that, for the purposes of this section, because title II–C in-school youth are enrolled in educational programs, they meet the requirement of being enrolled in "other additional services" (§ 628.804(d) and (e)).

The Volunteer Program

Several commenters felt that the requirements at § 628.540 were too restrictive and burdensome. In response, and in consideration of the principle that a volunteer program should, in fact, be voluntary for former participants, the Department is removing the goals, objectives and documentation requirements in the final rule. Section 628.540, as revised, merely repeats the statutory requirement which the Department believes is self-explanatory. The Department encourages the SDA's to work with former participants to have them share their experiences in the program and in the workplace with current participants. The Department also advises the SDA's to document any use of JTPA funds for this volunteer program.

Linkages and Coordination

Sections 205 and 265 of the Act require that SDA's operating adult and year-round youth programs establish appropriate linkages with other Federal human resource programs, including Department of Health and Human Services' (HHS) JOBS program, the Department of Housing and Urban Development's (HUD) Comprehensive Modernization Program, the Department of Energy's (DOE) Low Income Weatherization Grant program and programs under the National Service Act. Other linkages may also be established with appropriate State and local educational, social service, and public housing agencies, including CBO's, business and labor organizations, volunteer groups and others, such as women and older worker organizations, to avoid duplication and to enhance the delivery of services. In addition, youth programs are required to establish linkages with appropriate educational

agencies which include formal agreements for procedures for referring and serving in-school youth, methods of assessment, notification when students drop out of school, and arrangements with educational agencies for services for in-school and out-of-school youth. These provisions are reflected in § 628.545.

Several commenters urged that coordination should begin at the Federal level. The Department agrees and has begun discussions with a number of other Federal agencies to increase coordination at the Federal level and, as the commenters requested, to seek ways to develop common definitions and procedures applicable across program lines. The commenters were concerned that all the responsibility for coordination rests on the JTPA system. It is, of course, true that the Act and these regulations, since they focus on the JTPA system place a burden on the system to be a prime mover in the process of developing coordinated program relationships. A State or SDA is required to make good faith efforts to seek coordination and cooperation where it is possible to do so.

Several commenters questioned the ability of SDA's to establish appropriate linkages if other agencies are not operating under similar mandates. Some comments recommended that the Governor encourage coordination efforts through the SJTCC and, where feasible, develop agreements at the State level which would provide the basis and authority for local agreements and ensure the best utilization of funds between agencies. The Department agrees that these recommendations are a good way to establish effective and systematic coordination and language to this effect is added to § 628.545(a). The new language recognizes both the SJTCC and the HRIC, whichever is in place in a State, as useful focus points for coordination efforts. In addition, a few comments referred to the importance of the SDA's documenting instances of attempted coordination efforts and of sharing this information with the Governor's office. This provision also is included in § 628.545(a) to link State coordination agreements with local achievements by means of the job training plans.

In addition, to emphasize the importance of "one-stop shop" career centers and seamless "single point of contact" delivery systems, which was the concern of several commenters, a new § 628.545(b) is added. SDA's are encouraged to facilitate such delivery systems in coordination with other agencies, which may include both the development of ISS plans and of a common program application, as well as a unified job development effort and comprehensive program design. Such linkages may provide for a JTPA entity jointly funding or administering a program with funds from another agency, such as an SDA jointly funding aspects of a public housing agency's Comprehensive Modernization Program or the local JOBS program. Alternatively, when appropriate, the SDA could earmark funds to be spent within public housing areas for services to residents.

Other coordination issues discussed were the difficulty of defining and receiving information on dropouts from some local educational agencies and the fact that agreements should be limited to those education agencies which plan in-school activities. With regard to obtaining information on school dropouts, the Department has initiated discussions with the Department of Education with the goal of working out a common definition and systematic approach for identifying and serving dropouts. In the meantime, States are encouraged to negotiate agreements with State educational agencies to facilitate this task. With regard to limiting the agreements required at the local level with educational agencies, § 628.545(c) is amended to reflect these concerns by the addition of the qualifying terms "appropriate" and "which participate in JTPA programs."

Transfer of Funds

A few commenters raised questions concerning timing issues not addressed in § 628.550 of the interim final rule: whether transfers must occur at the beginning of the program year; whether they may occur at any time during the 3-year funding period; and whether the provisions are applicable to the 1993 title II–B program. The Department does not address these issues in the final rule, leaving the first two issues to be addressed at the Governor's discretion. In response to the third issue, the provisions are applicable to the 1993 title II–B program; this issue is addressed in the transition provisions at § 627.904(k)(2) of the final rule.

In addition, paragraph (b) is revised to permit transfers of up to 20% of the title II B funds allocated to an SDA under section 252(b) of the Act to title II C. This change is consistent with the amendment made to section 256 of the Act by the Goals 2000: Educate America Act, Pub. L. 103–227.

Title II–A—The Adult Program

Most of the general requirements of title II–A appear in subpart E of part 628 of the interim final rule. There are a few specific requirements of title II–A which appear in part 628, subpart F. These include sections on eligibility; requirements to assist hard-to-serve individuals; types of training services, counseling and supportive services; and linkages and coordination.

In response to commenters who were confused about whether the provisions of the formula for allocation of funds set a maximum age of participation at 72 years, § 628.605(a) is amended to clarify that there is no maximum age of participation.

A few commenters asked for clarification on the determination of the 65-percent threshold of serving the hard-to-serve. Section 628.605(c)(1) is amended to clarify that all participants, including the non-disadvantaged (10 percent window), are considered in determining the 65 percent who are hard-to-serve. Section 628.605(c)(2) now addresses the question of when, in the service continuum, an individual is counted for determining compliance with the 65-percent barrier requirement by clarifying, as discussed earlier, that it is calculated upon participants who have received a service subsequent to objective assessment.

Several commenters questioned the inconsistency in the provisions regarding the ten-percent window in section 204(d) of the Act and the provisions for eligibility in the basic title II–A program, set forth in § 628.605(e), when an older worker is in a joint program between JTPA and title V of the Older Americans Act. As discussed in connection with the provisions of § 628.320, this inconsistency has been addressed by the Congress in amendments to the Older Americans Act.

Finally, on the regulatory provisions of § 628.605(c) and § 628.803(d) addressing the 65-percent requirement, several commenters asked what would be the ramifications of non-compliance. Of course, the Department does not expect difficulty in meeting these requirements. Since the Act imposes these percentage service requirements, as well as the requirement on the in-school, out-of-school 50/50-percent ratio, on participants and not to funds, the Department believes that they would be the subject of administrative corrective action by the SDA and, subsequent action by the Governor under the provisions of section 164(b)(1) of the Act and part 628, subpart G of the final rule, as appropriate.

Summer Youth Employment and Training Program

Subpart G of part 628 covers the Summer Youth Employment and

Training Program (SYETP under title II–B, effective with calendar year 1994. It reflects the policy of closer integration for youth between academic fundamentals (such as reading and mathematics) and work requirements.

A number of commenters raised issues related to the SYETP authorized under title II–B. Several commenters requested broad flexibility in the scope of the objective assessment and ISS required for summer program participants. Some expressed the fear that these requirements will result in a reduction of the number of SYETP participants due to the increased burden on current staff. The Department recognizes that the achievement objectives and resulting service strategies for summer youth differ from what might be expected in the adult program and that the corresponding assessment processes would vary accordingly. Section 253(c)(1)(A) of the Act states that SYETP programs shall include objective assessment of the basic skills and the supportive service needs of each participant. The SDA may use school records on math and reading levels to determine basic skills. Similarly, the fully developed ISS, described in subpart E, is not required for a participant who is enrolled only in the SYETP, as is reflected in § 628.515(b)(2). For those participants transferring to the year-round program under title II–C, the full objective assessment and ISS would be required. The results of any post-title II–B participation test should be used as part of the assessment process when transferring the individual to a program under title II–C. Within the limits imposed by any applicable state or local privacy laws or rules, SDA's are encouraged to make as much use as possible of existing information from schools and from title II–B participation in developing the full objective assessment for a transferring participant, as well as sharing available JTPA information with school counselors and other appropriate school officials.

A few commenters addressed the inability of SDA's to provide the required basic and remedial education services without reducing the number of youth served or other services to youth. While this is a difficult tradeoff in some areas, the Department is bound by the emphasis in the amendments to provide educational services to participants. In some instances, it may be necessary to reduce the number of participants served in order to get high-quality experiences under title II–B. Coordination and leveraging of resources is recommended to allow more participants to receive educational services.

In order to more closely conform to sections 251 and 253(a) of the Act, § 628.701(a), on Program Goals and Objectives, is amended. The "enhancement of basic educational skills" is added to the list of possible SDA goals and objectives. Other additions include "encouragement of school completion or enrollment in supplementary or alternative school programs" and "improvement of employability skills including provision of vocational exploration opportunities and exposure to the world of work, and enhancement of youth citizenship skills."

A few commenters spoke of various difficulties involved with the determination and documentation of eligibility under the National School Lunch Act. Guidance on eligibility verification pertaining to the determination and documentation of eligibility under the National School Lunch Act will be developed in consultation with the Department of Agriculture and will be provided outside of these regulations. See the further discussion of this subject in the section pertaining to programs under title II–C.

For the reasons discussed previously, in connection with eligibility for the education coordination grant program, the Department has determined that the criteria for eligibility, as they relate to the "economically disadvantaged" eligibility criterion and alternatives for in-school youth, should be consistently applied across programs under parts A, B, and C of title II of the Act. Therefore, in addition to eligibility for free lunch under the National School Lunch Act, the Department adds participation in a compensatory education program under title I chapter I of the Elementary and Secondary Education Act and in a schoolwide program, as specified at section 263(g) of the Act, to the criteria at § 628.702 of the final rule.

In response to commenters who raised the issue of the perceived limitation of 500 hours on the duration of work experience for youth and its effect on the summer program, the Department refers to the discussion of work experience that appears in connection with § 627.245 and the fact that the limitations on duration of work experience are removed.

Section 628.705(d), dealing with concurrent enrollment, is amended to clarify that 65 percent of the total number of title II–C participants shall have one or more barriers to employment. This is necessary because no such additional barrier to employment requirement exists in title II–B. The SDA must decide who is enrolled in title II–C programs from title II–B or elsewhere.

A new paragraph (e) on follow-up services is added to § 628.705. Section 253(d) of the Act requires that followup services be provided for participants if the ISS indicates that such services are appropriate. Title II–B funds may be used such follow-up services up to one year after program participation, including when this coincides with title II–C participation when determined appropriate during participation in the title II–B program and recorded in the participant record. All supportive services in section 4(24), except financial assistance, are included in followup services. Appropriate followup activities for title II–B participants include counseling, mentoring, or tutoring.

Finally, with the enactment of the Goals 2000: Educate America Act, there were amendments to the program under Title II–B. The Department believes that these are important changes and wishes to call attention to them in this rulemaking process. Therefore, some of the statutory provisions have been directly included in this final rule at § 628.

Subpart H—Youth Training Program

A number of commenters suggested that the term "out-of-school youth" be clarified or defined in § 628.803(h). Several commenters specifically cited attendance in an alternative school or education program as a criterion. A few commenters specifically said that the Congressional Conference Committee Report makes clear that this definition encompasses youth enrolled in alternative education programs. They encouraged the inclusion of alternative education programs in the definition of "out-of-school youth". Other comments stressed a combination of options including students attending area learning centers, adult basic education classes, general educational development (GED) preparation, vocational schools, or colleges. Others wanted truants, dropouts, and those on suspension status specifically included. One recommended that the State define out-of-school.

A few commenters wanted the term "in-school youth" clarified or defined. Some commenters had specific suggestions such as leaving the definition up to the Governor or placing it in § 625.5, Definitions.

In an earlier attempt to provide administrative clarification in this area, the Department had provided guidance to the Regional Offices on the definition

of "in-school youth" and out-of-school youth" in Field Memorandum No. 34–93. This guidance indicated that an in-school youth was a youth who had not received a high school degree and was attending school on a full-time compulsory basis. An out-of-school youth was a youth who was not in school, or as suggested by the report of the Conferees, was attending alternative school or was habitually truant.

In comments to the Department, it was indicated that the interim guidance was problematic for two reasons. First, a 14 or 15-year-old youth attending alternative school would not be eligible to participate if defined as out-of-school since a 14 or 15-year-old could only be eligible as in-school youth. Second, if a youth was in alternative school and considered in-school by the school system, but defined as out-of-school for JTPA, the eligibility criteria of participation in a compensatory education program or eligibility for free lunch could not be applied.

The issue is of some interest to the JTPA system, especially in light of the requirement that at least 50 percent of the youth served be out-of-school youth. The Department has given careful consideration to this matter and has determined to take a slightly different course. The regulations define "in-school youth" at § 628.803(b). The Department has not included the concept of being subject to compulsory attendance requirements because in some States these requirements end at an age before a youth has attained a diploma and the Department believes that attainment of a diploma is key to the criteria for being in school. The word "diploma" is substituted for "degree" to distinguish from post-secondary attainment. Any other youth is out-of-school. Rather than further define "out-of-school" in a way that would create the problems noted above or create a number of unnecessary exceptions, the Department has decided to adopt, in § 628.803(h), the exceptions suggested in the Conference Report which set forth the requirement that 50-percent of youth served must be out-of-school. The Conference Report indicates that youth in alternative schools or who are "habitually truant" may be considered as out-of-school for purposes of meeting the statutory requirement. "Alternative school" also is defined. Section 628.803(h) is revised accordingly so that paragraph (h)(2) is redesignated as paragraph (h)(3) and a new paragraph (h)(2) is added.

Several commenters were concerned that the status of high school graduates was unclear. The intent of the revision of the definitions in the final rule is to make it clear that all youth who are not in-school are out-of-school. Thus, high school graduates or GED recipients, who are not enrolled in post-secondary education programs, would qualify as out-of-school youth. It should be stressed, however, that the primary intent of including the "out-of-school" eligibility category in title II–C was to stress services to high school dropouts. SDA's should focus their services on this group.

A few commenters noted the problems with documenting the free lunch program as an eligibility criterion for youth. That program has strict confidentiality provisions. One urged the Department to work with the appropriate agency to improve the existing process. While section 9 of the National School Lunch Act assures confidentiality, schools may release summary information such as the number of eligible children in a school. Parents may sign waivers of confidentiality for specific programs. Households may voluntarily provide evidence of eligibility. The U.S. Department of Agriculture (USDA) is requesting that their regional offices notify State agencies of these regulations and suggest they share this information with local school administrators. The Department plans to work with USDA staff to coordinate this effort. Section 628.803(c) is amended to reflect that the Department will provide further guidance on the verification of documentation regarding the free lunch program.

Regarding the requirement to serve hard-to-serve individuals, § 628.803(d)(2) is amended to state that all Job Corps participants shall be considered as out-of-school and shall be automatically considered to have a barrier to employment. This change is made to foster JTPA/Job Corps coordination. SDA's now will have an incentive to provide job development and placement services for Job Corps participants. All positive program terminations will be enjoyed by both systems.

A commenter sought clarification as to whether non-economically disadvantaged youth enrolled as a part of a schoolwide project are to be counted as part of the 10 percent non-economically disadvantaged stated in § 628.803(f). As stated in § 628.803(h)(2), these youth do not count against the 10-percent window.

Commenters sought clarification of the provisions of the regulations regarding title II–C eligibility based on schoolwide project participation. Section 628.803 is amended to add a paragraph (g)(3) to restate the provisions of the Act on the criteria for schools that qualify for schoolwide projects, and a paragraph (g)(4) which states that the SDA determines its schoolwide projects and provides a list of examples of possible projects.

One commenter pointed out that section 263(g)(1)(C) of the Act requires that projects be in schools in which not less than 70 per cent are hard-to-serve and that the regulations should define a reasonable standard to determine this. This is addressed in DOL's Technical Assistance Guide on Eligibility which specifies that the school makes the certification that 70 percent of its students meet the criteria. The SDA may rely upon the school's certification for purposes of compliance.

A few commenters suggested that for a school-wide project, an entire school district should be allowed to qualify and not just an individual school. The Department believes that the provisions of the Act clearly apply to an individual school. No change is made to the final rule.

Several commenters sought clarification of when SDAs would be required to have complied with the requirement to serve 50-percent youth who are out-of-school. Section 628.803(h)(1) is amended to state that the Governor has the responsibility to determine the period for which the 50 percent out-of-school requirement will be calculated based either on the period covered by the job training plan or on a program year.

A few commenters maintained that the term "dropout" needed clarification. "School dropout" is defined at section 4(38) of the Act as an individual who is no longer attending any school and who has not received a secondary school diploma or a certificate from a program of equivalency for such a diploma. That definition is now referenced at § 628.804(c).

There were many comments on title II–C authorized services including limited internships, entry employment experiences, cooperative education, tryout employment, youth work experience, youth OJT, and others. Most of these comments indicated confusion and asked for clarification in a variety of ways.

A few commenters wanted limited internships clarified. A few commenters expressed surprise at how open limited internships were compared to OJT with 100-percent wage reimbursement at a private-for-profit employer and no classroom training component. A few commenters thought the provision on entry employment experience was poorly written and confusing. Some wanted clarification on cooperative

education. Entry employment experience, cooperative education, and limited internship offer work-based training experiences in a work setting. The Department believes that the particulars of how they are designed and carried out should be a matter of State and local policy, so long as they are consistent with general provisions of the regulations. The Department encourages the development of such work-based training programs in conjunction with education components that reinforce the experience. The 500-hour limitation on entry employment experience and limited internship is removed and § 628.804(h)(2) of the final rule is amended accordingly. With regard to cooperative education programs, the Department wishes to emphasize that, as has been the practice, no subsidized wages may be paid to participants in this activity.

In response to commenters who sought clarification of what constituted an alternative course of study, the § 628.803(h)(2) includes examples of an alternative school program including an alternative course of study in connection with the in-school, out-of-school ratio. Section 628.804(b) indicates that the alternative course of study shall be approved by the local educational authority and may be delivered by a CBO. The Department believes that the JTPA rules should not specify the characteristics of an alternative course of study when, in almost all instances, this falls within the responsibility of the local educational authorities.

A commenter asked whether tryout employment is allowable under title II–C. Tryout employment previously was described in section 205 of the Act. If conducted under the provisions of title II–C, it would be a kind of entry employment experience. The design of such an activity and the decision to use it is made at the local level.

A few commenters stressed that youth work experience should not be limited to 500 hours. As previously discussed, the final rule is revised to clarify that work experience has no duration limitation.

Several commenters expressed alarm over the title II–C OJT requirement that the youth OJT wage equal or exceed the average wage at placement of title II–A wage. Commenters stated, in various ways, that the new provisions on OJT for youth will eliminate youth OJT as a program option and that JTPA will lose its ability to serve this special needs population. There were several recommendations on how to compute wage. Several wanted the wage to be computed based totally on youth wages. It is clear that the language at section 264(d)(3)(C)(i)(I) of the Act intends the youth OJT wage to be based on the adult wage in title II–A. Section 628.804(j)(1)(i) is amended to clarify that wages for OJT positions meet or exceed the average wage at placement in the SDA for participants under title II–A "based on the most recent available data." This replaces the language in the interim final rule of "in the preceding program year." Some may still view these provisions as eliminating private sector work for youth. The Act, however, provides other opportunities for youth in the private sector, such as entry employment experience, limited internships, and cooperative education. A few commenters expressed concern that disabled youth will be hurt by the new wage restrictions for youth OJT. These new training options may be developed with the disabled in mind. These options can be used to provide sheltered or supported work experiences for disabled youth similar to those available under OJT.

Section 628.804(k) is amended to clarify that supportive services may be provided after termination. They include the full range of supportive services defined at section 4(24) of the Act, except for financial assistance, for up to a year after termination. In the title II–B section of this Preamble, "follow-up services" that would help bring JTPA closer to the goal of a year round program for youth are discussed.

Part 631—Programs Under Title III of the Job Training Partnership Act

A number of comments received by the Department in response to the December 29, 1992, interim final rule specifically addressed title III issues and concerns. The revisions to the regulations for part 631, Programs under Title III of the Job Training Partnership Act, were driven by changes to the legislative provisions contained in the Job Training Amendments of 1992 and the Defense Authorization Act for Fiscal Year 1993. Only those comments pertaining to the proposed regulatory revisions stemming from the legislative changes were considered. After the issuance of the interim final rule, the enactment of the NAFTA Worker Security Act required additional revisions to the regulations.

Several commenters recommended editorial changes to the proposed regulatory language. These suggestions were incorporated depending on their accuracy and usefulness. Major comments on the proposed revisions to Part 631, the Department's analysis of and reaction to those comments, and major changes to the final rule are discussed below.

Definitions

The interim final rule at § 631.2 added an additional definition of "substantial layoff (for rapid response assistance)", which establishes a minimum threshold for the provision of rapid response assistance. This minimum threshold cannot be waived, but a new provision, at § 631.30(b)(6), which provides the Governor with alternatives for complying with the threshold and providing rapid response assistance in exceptional circumstances has been clarified. In addition, that provision has been expanded to reflect a requirement of the NAFTA Worker Security Act.

A few commenters questioned whether the "employment loss" in this new definition relates to a single business or to the geographic area. To maintain consistency with the Worker Adjustment and Retraining Notification (WARN) Act, "employment loss" in this context relates to a single site of employment .

Regarding the new definition of "substantial layoff", another commenter stated that employers periodically lay off, temporarily, 50 or more employees during a 30-day period and then recall these individuals. Therefore, the commenter recommends that rapid response assistance should only be authorized if the duration of a layoff is expected to last for 6 months or more. The Department believes that, after determining a layoff meets the definition of substantial layoff for rapid response assistance purposes, a State is still required to determine, among other things, the expected duration of the layoff, the level of need of the affected individuals and their individual eligibility for services. Ascertaining their need for assistance should include contacting the employer and a representative of the workers. The State should then decide whether or not to offer services based on these determinations.

A few commenters believed the new definition would exclude rapid response assistance for numerous small scale reductions and stated that, if the definition could not be altered, more latitude should be given to the States under the "exceptional circumstances" provision to respond to smaller layoffs. A commenter suggested expanding "exceptional circumstances" to include other situations, and another commenter suggested alternative language for § 631.30(b)(6) to allow the Governor to establish a threshold below 50 for rapid response assistance purposes. Finally, one commenter thought § 631.30(b)(6)

directly contradicted the definition of "substantial layoff (for rapid response assistance)" and questioned the legislative basis for this new provision.

As a statutory provision, the minimum threshold of 50 employees established by the new definition of substantial layoff cannot be waived. However, through § 631.30(b)(6), the regulations do provide flexibility to States to establish policies that allow rapid response assistance to be provided to layoffs of less than 50 workers at a single site. The Governor must establish guidelines defining parameters for "impact on a local community." The only limitation is that States must maintain a capability to respond to single site layoffs of 50 workers or more. In other words, States cannot establish policies which would exhaust their ability to provide effective and timely rapid response to layoffs of at least 50 workers.

A few comments reflected concerns with both definitions of substantial layoff or with having two separate definitions. One commenter believed the Governor should have the discretion to reduce the worker threshold below 50, while another believed the definitions must be flexible enough to accommodate local circumstances. A few commenters stated that having two different definitions was administratively confusing and could lead to disallowed costs as a result of the difficulty of ascertaining if the 33 percent threshold had been met. To promote consistency, they recommended using the definition of "substantial layoff for rapid response purposes" as the sole definition of the term. Other commenters believed having two distinct definitions established a possible conflict (i.e., individuals who receive services through rapid response assistance may not meet the title III eligibility criteria), and indicated that a single definition of rapid response was preferable.

The definitions of "substantial layoff for participant eligibility" and of "substantial layoff for rapid response purposes" are different as a result of responsive title III policy evolution. Originally, the Department used the WARN definition of "mass layoff" to establish a linkage between title III programs and WARN, and to set forth a minimum threshold for the provision of State rapid response services. To provide greater flexibility for State rapid response assistance, Congress provided an additional definition of substantial layoff, but clearly made it exclusively for rapid response purposes. Therefore, the two definitions of substantial layoff will remain intact.

Participant Eligibility

Broader eligibility rules (criteria) are established in

§ 631.3(b) for the receipt of selected readjustment and retraining services in instances where an employer makes a public announcement of a plant closure, pursuant to section 314(h) of the Act.

A few commenters asked what constitutes a public announcement of a planned closure. One commenter specifically asked what constitutes a public announcement for the State, and if a WARN notice or a letter to the Governor or locally elected official from the employer would suffice.

Section 631.3(b)(4) states that "the Governor shall establish criteria defining 'public announcement'. Such criteria shall include provisions that the public announcement shall be made by the employer and shall indicate a planned closure date for the facility (section 314(h) of the Act)." The Department believes a WARN notice, and most likely a less formal declaration by an employer, would meet these criteria. However, within the parameters established in the regulations, the Governor ultimately determines what constitutes a public announcement of a planned closure.

A few commenters questioned what would happen if a decision to close a plant was changed. A few commenters specifically asked what would occur if a decision was reversed (e.g., Would the project be canceled? What happens to the workers who were determined eligible and enrolled? Are they terminated? What impact would a reversal have on cost category limitation, performance standards and outcomes?). They recommended the institution of a hold harmless provision. One commenter asked if an individual would remain eligible for retraining should a closure date be delayed or if an individual in classroom training never received a notice of layoff. Finally, another commenter stated that the participants should not be denied service or experience an interruption in enrollment due to delays in closing dates.

The determination of EDWAA eligibility for any of the program's services and activities is determined based on the best information available at the time. If the circumstances upon which the eligibility decision(s) were based change, a reevaluation of the continued need for the services/activities is appropriate. It is expected that consideration would be given to such factors as the exact nature of the employer action (postponement or reversal), where the participant is in the system (e.g., whether the participant is enrolled and participating in a retraining activity), and the impact of a termination on the individual. However, title III expenditures for services/activities to a participant who was correctly determined to be eligible are not, in and of themselves, disallowed costs.

A commenter asked how States should define "plant or facility closing" within the context of § 631.3(b). Specifically, they asked if WARN rules should be used in defining these terms (i.e., whether line closings within a plant or the elimination of a shift should be considered a plant closing). While the Department believes the WARN rules provide helpful guidance, this determination is left to the discretion of the Governor.

Another commenter requested the addition of language requiring the availability of "rapid response-like activities" to a firm entering bankruptcy, whether or not a formal public announcement has been made. Section 631.3(b)(1) provides for participant eligibility in the event of a formal public announcement of a plant closure. While no change is made in the final rule, a State may, pursuant to section 314(b) of the Act, provide rapid response assistance after becoming aware of a current or projected permanent closure or substantial layoff. Moreover, the firm's employees may receive the services authorized in section 314 of the Act if they meet the eligibility criteria established at section 301. In assessing the circumstances of an impending bankruptcy, it is expected that the Governor would determine whether the filing would result in a closing, a layoff, or a Chapter 11 restructuring with no contemplated change in manpower.

A commenter questioned whether or not a participant had to be enrolled to receive basic readjustment services and if limited basic readjustment services could be provided to eligible workers prior to enrollment into a title III program. Section 314(c) of the Act (Basic Readjustment Services), of course, includes outreach and intake. The Department believes that outreach and intake services include limited assessment of an eligible applicant to allow service providers to evaluate an applicant's suitability for JTPA training and services. The definition of "participant" at section 4 of the Act provides that: "Participation shall be deemed to commence on the first day, following determination of eligibility, on which the participant began receiving subsidized employment, training or other services."

A few commenters felt that § 631.3(b)(3) inappropriately excluded certain groups from consideration as "eligible dislocated workers" pursuant to § 631.3(b). A few believed involuntary, forced and early retirements should be excepted from this provision, since many individuals falling into this category have lost jobs through no fault of their own. Stating that individuals are often forced or "seduced" into early retirement, another commenter wished to except any individual who is likely to retire.

The exclusion of individuals "likely to retire instead of seeking new employment" is statutorily required at section 314(h)(1) of the Act and, therefore, will remain. The Department interprets the Act to preclude services to those who are unlikely to need them because they will remain employed with the employer or because they will retire. The decision about whether any individual who has "voluntarily" retired does, in fact, intend to remain unemployed must be made on a case-by-case basis. This decision is best made at the state or local level. Therefore, the Governor is responsible for the interpretation of this phrase and its subsequent application.

Another commenter questioned what was acceptable documentation that a person is "likely to remain employed with the employer or to retire" when no individual notice is provided. It is within the Governor's discretion to determine what would be acceptable documentation.

A new § 631.3(j) is added to set forth the requirements of section 250(b)(2)(C) of the Trade Act of 1974 (19 U.S.C. 2271, et seq.), as amended by the NAFTA Worker Security Act (Title V of Pub. L. 103–182).

Approved Training Rule

Section 314(f)(2) of the Act states that eligible individuals participating in title III programs may receive unemployment compensation benefits consistent with State policies under the Approved Training Rule and defines eligible workers as those "participating in training (except on-the-job training)." The language in the final rule at § 631.4 is revised from participation in "any of the programs" to "any retraining activity, except on-the-job training."

One commenter thought that limiting the receipt of unemployment compensation benefits to only those trainees participating in a retraining activity was inappropriate. Specifically, the commenter believed trainees in a class providing assessment and the preparation of an individual service strategy (ISS) are not available and looking for work, and they too need compensation.

Objective assessment and preparation of an individual readjustment plan are defined in section 314(c) of the Act as basic readjustment services and, therefore, individuals participating solely in these activities fail to meet the criteria established under section 314(f)(2) of the Act and § 631.4.

Classification of Costs at State and Substate Levels

Section 631.13 was not altered in the interim final regulations. However, a few commenters suggested redefining "retraining" to be consistent with "direct training services" under titles II–A and II–C and "basic readjustment services" to be consistent with "training-related services" under titles II–A and II–C.

While the Department acknowledges that statutory requirements often present barriers to coordination, it must be pointed out that titles II–A and II–C and title III authorize separate programs with distinct goals, structures, services and requirements. For example, objective assessment is defined in titles II–A and II–C as a direct training service while it is defined in title III as a basic readjustment service. The statute and, in turn, the regulations reflect this fact. Therefore, the different terms with their distinct definitions remain intact in the final rule.

Limitations on Certain Costs

The basis for computing the cost limitations which apply to expenditures of title III funds has been changed from annual expenditures to program year allocation (for substate grantees), or to funds reserved by the Governor from the program year allotment (for States). This change reflects the amendments to section 315 and recognizes that grantees are permitted to have up to 3 years in which to spend allotted funds, subject to certain adjustments applied through the reallotment process for under-expenditure. Other major changes to this subject area include the addition of § 631.14(i) to clarify that the funds allocated (or distributed) to a substate grantee under the provisions of section 302(c)(1)(E) of the Act shall be included in the substate areas formula allocation for purposes of applying the cost limits, and the addition of § 631.14(h) to allow neighboring substate grantees to combine funds to serve dislocated workers from two or more substate areas.

A few commenters asked if it is allowable to provide funds to substate grantees under the provisions of section 302(c)(1)(A)–(D) of the Act and, if so, whether these funds must be considered funds allocated to a substate grantee for the program year of the funds' initial allotment to the State and included in the cost limitations of § 631.14(a)–(c).

While funds reserved by a State for activities under section 302(c)(1)(A)–(D) of the Act may be expended through a subgrant or contract with a substate grantee, these funds would still be considered funds allocated to the Governor, as defined at § 631.14(i)(3), for the program year of the funds' initial allotment to the State and included in the cost limitations applicable to the Governor. As the statute allocates these funds to the Governor for the explicit purpose of carrying out responsibilities assigned to the State, expenditures of these funds are to be treated as State-level expenditures, regardless of the operator incurring those expenses.

One commenter asked whether TEGL No. 1–90, Change 1, which specified that cost limitations would be calculated based on "total maximum allowable expenditures", would remain in effect after July 1, 1993 and if new guidelines would be issued for calculating/determining title III cost limitation compliance.

TEGL 1–90, Change 1 was issued on June 18, 1991, and its content was based on the statutory and regulatory provisions effective at that time. The Department will review this TEGL and issue appropriate guidance.

This same commenter also asked if the minimum/maximum percentage requirements would be applied to the total final expenditures for each cost category to determine the minimum/maximum amounts after July 1, 1993. In a separate issuance, the Department will issue reporting requirements which will clarify the application of the cost limitations.

One commenter discussed the inconsistency between the 15 percent cap on administrative costs under the title III program and the 20 percent cap on administrative costs under the title II–A and II–C programs.

For titles II–A and II–C, section 108 of the Act established a revised limit of 20 percent of funds that may be expended for administration. However, as noted above, while the basis for computing the cost limitations which apply to expenditures of title III funds has changed, the statutory provision requiring a 15 percent cap on administrative cost has not. Therefore, this difference between the programs shall remain.

Questioning the application of § 631.14(g), one commenter asked if cost limitations must be complied with immediately if funds are deobligated

and, therefore, are no longer available. Cost limitations are applied at the time funds are no longer available for expenditure, in other words, when the 3-year availability period ends. When funds are deobligated, the total pool of funds which is available for expenditure is reduced and becomes the new base on which cost limitations will be applied. However, a State or substate grantee still has the entire period of fund availability to comply with the cost limitations as they apply to this new base.

Federal Reporting Requirements

A new provision was added in the interim final regulations, at § 631.15, requiring the State to provide a breakdown of all administrative expenditures by the dislocated worker unit, pursuant to section 311(b)(11) of the Act.

A few commenters asked what cost breakdowns and line items are required in the reports. As indicated in § 631.15, the specifics regarding the reports' content and format will be addressed through instructions to be issued by the Secretary. These were included in the reporting instructions for title III programs for PY 1993.

Federal Monitoring and Oversight

A new provision is added, at § 631.17, clarifying the Secretary's authority to oversee the State's provision of rapid response assistance and to require corrective action as necessary, as provided for in section 314(b)(3) of the Act.

One commenter questioned why the word "may" was used in § 631.17 in lieu of the word "shall" which is found in the language of section 314(b)(3) of the Act. This section is revised to reflect the language of the Act.

By prescribing how rapid response is to occur, another commenter thought this new provision, along with other sections of the regulations, resulted in "micro-management by the Department" and reduced the flexibility available to the States and local areas. The Amendments direct the Secretary to conduct oversight of rapid response to ensure the "effectiveness, efficiency and timeliness" of these actions. It remains the responsibility of the State to manage its program in accordance with the Act and the regulations.

Needs-Related Payments

An amended provision in section 314(e)(1) regarding eligibility for needs-related payments requires that a participant be unemployed, and this requirement is incorporated in § 631.20(c).

One commenter disapproved of the change since it denies needs-related payments to participants working any number of hours. This commenter indicated that not only were they able to keep the costs of these payments down by having participants work part-time, but full-time students could work part-time and have these earnings supplemented by the payments to allow them to complete their program.

As stated above, section 314(e)(1) of the Act clearly states that a participant must be unemployed to receive needs-related payments. As a result, the final rule remains unchanged.

Designation or Creation and Functions of a State Dislocated Worker Unit or Office, and Rapid Response Assistance

A provision at § 631.30(a)(8) requires the State to immediately (within 48 hours) notify the substate grantee of current or projected layoffs and closures in the local area for the purpose of continuing and expanding upon the services initiated by the rapid response team, as required in section 311(b)(3)(D) of the Act. Moreover, section 311(b)(12) of the Act stipulates that accountability for rapid response assistance resides in the dislocated worker unit (DWU), although the DWU may contract with other entities for the provision of these services. This is reflected in the provisions at § 631.30(b).

One commenter questioned whether 48 hours meant 48 working hours and what would happen if the information was made available on a Friday afternoon. The Department believes the Governor is responsible for the interpretation and application of the term "48 hours."

Another commenter indicated stronger language needed to be incorporated into the regulations to ensure that the State did not pass off its rapid response responsibilities to the substate grantees. After reviewing § 631.30(b), the Department feels the language adequately addresses this concern. The regulatory provision remains unchanged.

Allocation of Funds by the Governor

In the Interim Final Regulations, a provision was added to § 631.32(b)(2) to clarify that Governors must give consideration to each of the substate allocation formula factors required by section 302(d) of the Act unless the factor is not relevant to economic dislocation conditions of the State.

A few commenters had questions regarding the formula for making substate allocations. One commenter indicated that § 631.32(b)(3) should also allow a zero weight factor to be used where data are not adequate or not provided or funded by a Federal partner. Specifically, they mentioned that plant closing and mass layoff data are no longer funded and farmer-rancher economic hardship data have never been provided by the Department and the USDA.

The Mass Layoff Statistics program was temporarily suspended by the Bureau of Labor Statistics. The Department intends to resume the Mass Layoff Statistics Program early in 1995. During the interim period, however, States will have to develop their own data and proxies for mass layoffs. Similarly, States have been responsible for developing their own data and proxies for farmer-rancher economic hardship data. It is inconceivable that a State government would have no idea as to economic circumstances in its own State. If "a review of the available data indicates that the factor is not relevant to determining the incidence of need for worker dislocation assistance within the State", then a zero weight may be assigned (§ 631.32(b)(3)). However, current lack of data is not an adequate reason for invalidating a factor which is relevant to dislocation activity in the State.

Another commenter wondered if the Governor had an obligation beyond the requirements of § 627.463 (public access to records) to publicize the elements of the formula or describe the rationales for them.

The Department requires each State Plan to include a description of the State's substate allocation formula methodology, including the data elements and allocation formula to be used. Moreover, pursuant to section 311(b)(9) of the Act, the Plan must be made available to the State job training coordinating council to review and comment on prior to its submittal to the Department. Therefore, through this process, both the State Council and the Department will have an opportunity to examine the within-State distribution formula.

Substate Plan

While no significant revisions were made to § 631.50 of the regulations, one commenter stated that the interim final rule omits any requirement for SSG's to meet program goals, develop an oversight plan and build capacity and noted that comparable provisions for SDA's are at § 628.420(b)(2), (3) and (c).

As stated earlier, the proposed revisions to the regulations for part 631 were driven by changes to the legislative provisions contained in the Job Training Amendments of 1992 and the Defense Authorization Act for Fiscal Year 1993.

The Department has chosen not to regulate in areas unaffected by statutory change. Only those comments pertaining to the proposed regulatory revisions stemming from the legislative changes were considered for incorporation into the final rule. Therefore, § 631.50 remains unchanged.

Cost Limitations

Section 631.62 of the interim final rule stipulated that the cost limitations under part A of title III will apply to projects operated under part B of title III, except when waived or altered by the application guidelines, or by the Grant Officer in the terms of the grant. In response to comments, the Department has modified this provision in the final rule. The Department still intends to use the title III–A cost limitations in cases where applicants for grants do not ask for a different allocation of costs among the cost categories, but the Department does not wish to discourage applicants from designing their programs in the manner that will best serve the affected population. The final rule is revised to make it clear that applicants for grants can propose costs and that the Grant Officer has the discretion to accept them. It is the Department's intent to provide grant applicants flexibility in designing the mix of services in their programs. However, the Department will agree to proposals with administrative cost in excess of 15% only in extraordinary circumstances.

One commenter asked if this provision will apply to the Defense Conversion Adjustment (DCA) Program projects currently in operation or whether these projects will continue to operate under the regulations in effect at the time of award. Each discretionary project is subject to the grant agreement and modifications as approved by the Grant Officer. Modifications to an existing grant may be requested by the grantee and agreed to by the Grant Officer according to the provisions of this final rule.

Finally, three commenters discussed the difficulty of applying the Act's section 315 cost limitations to Clean Air Employment Transition Assistance projects. As stated above, the cost limitations in the grant agreement control, however, modifications to existing grants may be requested. For future grants, applicants are free to apply for other cost limits that fit their programs.

Reporting

A provision was added at § 631.63 of the interim final rule, setting forth the Federal reporting requirements for recipients of title III discretionary grants, consistent with section 322(a)(4) of the Act.

One commenter thought the process for notifying the Secretary regarding significant developments concerning the grant or subgrant was too complicated and could delay the implementation of the project and workers' access to services.

Section 631.63(b) simply requires the grantees to provide information to the Department on any significant developments that impact the project. This reporting requirement should not affect or delay the project's execution.

Special Provisions for CAETA and DDP Programs

Section 631.60 has been clarified to state that Subpart G relates to programs and funds reserved to the Secretary for use under part B of title III of the Act: Including section 323 (20% discretionary funds); section 324 (Demonstration Programs); section 325 (Defense Conversion Adjustment Program); section 325A (Defense Diversification Program); and section 326 (Clean Air Employment Transition Assistance).

The National Defense Authorization Act for 1993 authorized the Defense Diversification Program (DDP) as an amendment to JTPA, at section 325A. Its purpose is to provide retraining and readjustment assistance to workers and military personnel dislocated by defense cutbacks and closures of military facilities; and to provide planning support and conversion assistance for diversification of affected facilities within an area impacted by reductions in military expenditures or closure of military facilities. Section 631.65(c) of this final rule prescribes the needs-related payments procedure in accordance with the requirements in section 326(f) of the Act, as required by section 325A(i) of the Act.

The Clean Air Act is administered by the Environmental Protection Agency; however, the Clean Air Act Amendments of 1990, Pub. L. 101–549, at section 110(a), amended the Job Training Partnership Act by adding a new section 326, establishing the Clean Air Employment Transition Assistance (CAETA) program. Section 326 is designed to assure the establishment of programs to provide assistance to workers dislocated as a result of a firm's compliance with the Clean Air Act. The purpose of these programs is to provide readjustment and retraining assistance to eligible workers to enable such workers to return to work.

The Department published proposed CAETA regulations for comment on March 24, 1992 (57 FR 10232). Thirteen State, substate entities and other organizations submitted comments. Upon review, the Department has determined that there is no programmatic justification to have separate regulations for Clean Air. It is necessary, however, to make specific provision in the JTPA regulations for specific statutory requirements applicable to the CAETA program. The specific statutory requirements for that program are implemented herein at § 631.65.

Most of the comments received pursuant to the proposed regulations requested clarification of general JTPA title III areas that were subsequently addressed in the Interim Final Regulations on December 29, 1992 (57 FR 62004). The following discussion relates to comments on issues specific to the Clean Air Act.

Administration of Clean Air Act

One commenter suggested including a statement that the Clean Air Act is administered by the Environmental Protection Agency. DOL agrees with this comment and has added this statement in the preamble.

Needs-Related Payments

Several comments were received on the provisions of needs-related payments. One commenter indicated that the language in the proposed regulations might discourage grant applicants from serving those eligible for payments so they can conserve funds for training, and that applicants could perceive ETA as biased toward proposed grants with limited needs-related payments (NRP's). It was also believed that grant applicants should be encouraged to seek eligible dislocated workers most-in-need, particularly those requiring income support during training. The language at § 631.65(c) of the final rule is intended to reflect the statutory requirement that CAETA programs provide for adequate needs-related payments. The language is not intended to permit a programmatic restriction against those dislocated workers who are eligible to receive NRP's.

Another commenter raised a question about when grantees should start using family income to determine eligibility for needs-related payments. The Department agrees that there should be a time frame; it is only upon actual enrollment in a training and/or education program that one becomes eligible for consideration to receive needs-related payments. Individual or family income for the six-month period immediately prior to a participant's

enrollment in training and education programs is to be annualized to determine eligibility for needs-related payments.

One commenter stated that the determination of family income at the time of eligibility determination, and that the three-month re-determination requirement in the proposed rule would create administrative burdens. The determination of family income only applies to those dislocated workers who (1) have been determined eligible pursuant to section 326(a) of the Act, (2) have exhausted or are not eligible for unemployment compensation benefits, and (3) have been enrolled in training and education programs pursuant to section 326(f) of the Act. Section 326(f)(4) of the Act requires adjustments reflecting changes in family income. The final rule is revised to require that eligibility determinations "shall be reviewed periodically;" however, it is expected that an equitable system would be outlined in a grant application. It is expected that a grantee's system would be sensitive to participants' probable decreasing family income (depending upon the date of layoff) under the six-month income determination rule.

Another commenter suggested clarifying restrictions on needs-related payments to participants when relocation, out-of-area job search, or TAA allowances have ceased, or when OJT has been completed. The statute requires that needs-related payments be available to enable participants to complete training or education programs. Relocation and out-of-area job search allowances would normally be provided to participants who possess marketable skills, and, therefore, are not enrolled in training or education. If TAA allowances were being provided for training or education, needs-related payments may be used when TAA allowances are exhausted (if a participant is otherwise eligible for and enrolled in an education or training program under CAETA). After OJT, a participant ordinarily is employed and receives wages from the employer. If the participant is not employed, NRP's could only be made if the participant is enrolled in other training.

Two commenters asked what constitutes "satisfactory progress" in order for a participant to continue to receive NRP's, and how often this determination must be made. The Department expects a grant application to define a system to address this issue, based upon the training to be provided.

A commenter believed that the wording in the proposed rule, that grantees must provide needs-related payments, seemed less definitive and suggested stating whether the projects will be funded without providing for payments to any participant. Another commenter suggested having States check the needs-related payment policies of SDA's before initiating the needs-related payments requirement. Two commenters suggested using the same eligibility criteria for needs-related payments for CAETA as are used in other title III programs. Two commenters suggested allowing State or local flexibility in determining who receives payments and payments policy. Another commenter suggested that it would be confusing to make the needs-related payment rate applicable to the weekly unemployment compensation payment level or to the poverty level, which the commenter believed would limit the number of eligible individuals in classroom training.

The Department is unable to accede to the requests of these commenters. Needs-related payments are discretionary under title III of JTPA, and grantees have some flexibility in providing such payments. However, under section 326(c)(2) of the Act, CAETA funds must be used to provide needs-related payments in accordance with the requirements set forth at section 326(f) of the Act. Similarly, section 325A(i) of the Act provides that in DDP programs, needs-related payments must be made in accordance with section 326(f). The Act requires that the Secretary prescribe regulations with respect to needs-related payments for CAETA and DDP. The needs-related payments regulations at § 631.65(c) follow the statutory requirements at section 326(f) of the Act. Because of these statutory requirements of CAETA and DDP, grantees have little discretion and must provide needs-related payments in the manner set forth in § 631.65(c).

One commenter suggested developing regulations that require grantees to document reasons for denial of payments and give opportunities for participants who had payments suspended to seek redress up to and including the federal level. The Department agrees that grantees should include descriptions of systems in grant applications which document payments, reasons for denial of payments and suspensions. In addition, the regulations at § 631.64 require each grantee to establish and to maintain a grievance procedure which, among other things, would handle grievances related to needs-related payments. The regulations at subpart F of 20 CFR part 627 provide procedures for the federal handling of allegations of violations of the Act or regulations.

Participant Eligibility

Nine commenters raised questions regarding participant eligibility provisions for dislocated workers under CAETA. One commenter suggested expanding the eligible population to workers needing skills upgrading or retraining on new or modified equipment. Sections 301 and 326(a) of the Act establish eligibility criteria for CAETA. Dislocated workers may receive skills training in the same occupation in which they were previously employed if their current skills are obsolete, and such training is required for them to meet the local labor market hiring requirements for that occupation.

Two commenters suggested including a statement regarding the eligibility of workers who had been laid off from mines that supply coal to plants. The Department agrees that workers dislocated from mines as a result of compliance with the Clean Air Act would be eligible.

Another commenter raised the question of how one determines that an individual's dislocation is the consequence of compliance with the Act if the layoff notice does not specifically mention the impact of the Clean Air Act, and whether the grantee has to assure verification is done for each applicant. The CAETA grantee must determine and document that a layoff is Clean Air Act-related and must verify that each applicant was a part of such layoff. The application guidelines will provide for reasonable documentation which could establish that the layoff was related to the Clean Air Act.

Another commenter suggested allowing temporary employment with the employer from which the worker was dislocated. Participant eligibility for enrollment in CAETA is specified at section 326(a) of the Act. The Department believes that temporary employment with the same employer is inconsistent with the definition of dislocation and is restricted at § 631.3(i)(2).

Eligible Grantees

The Department received seven comments regarding entities eligible to apply for grants under CAETA. Three commenters indicated that submitting applications directly to the Department of Labor, rather than through the State, could lead to such problems as a lack of coordination, and duplication. Another commenter suggested that recipients should provide assurances that they are administratively capable of operating the program. Two commenters

suggested that limiting eligible grantees to States and territories of the United States would ensure coordination with State entities and SSGs. Section 326(b) of the Act permits the Secretary to recognize five types of eligible grantees, and it does not require applicants to apply through the State. The Department recognizes that there would be benefits to submitting all applications through the States, and encourages such action. It should be noted, however, that an "eligible grantee" may not be an appropriate applicant for a particular project. The nature and extent of the proposed project, and the capacity of an applicant, will be factors in evaluating an application and an applicant's ability to perform the work.

Subpart I—Disaster Relief Employment Assistance

A new Subpart I, to be administered under the title III National Reserve Grants program, provides for Disaster Relief Employment Assistance, as authorized by the new Amendments to title IV–J of the Act.

Section 631.84(a) discusses the projects that a unit of general local government in a disaster area may operate under this subpart. One commenter suggested substituting the phrase, "Davis-Bacon provisions shall apply on all projects related to demolition, cleanup, repair * * *" for "on projects regarding demolition, cleanup, repair * * *."

While Davis-Bacon does apply to Federal programs, the inclusion of this phrase does not change or clarify the meaning of this provision. Therefore, the section will remain unchanged.

Section 631.85 outlines the participant eligibility criteria under the Disaster Relief Employment Assistance Program. The statutory language regarding eligibility is not accurately reflected in this section. The final rule is revised to correct this problem. In addition, one commenter thought the Department should have the authority to declare persons who are eligible for titles II-A and II-C programs eligible for title III Disaster Relief Programs. Since the statute does not grant the Department this blanket authority, expansion of participant eligibility criteria will not occur.

Section 631.86 limits the length of disaster relief employment. One commenter questioned the difference between this type of employment and public service employment which is prohibited under titles II and III.

Although the statute prohibits public service employment funded under title II–A and C and title III–A, public service employment is contemplated under title IV-J of the Act. Disaster relief employment is narrowly defined and exclusively limited to the activities described under § 631.84. Allowable activities will not be expanded beyond the statutorily established parameters.

This same commenter asked how costs incurred for disaster relief employment should be classified and what criteria should be used in determining the monetary extent to which a cost category has benefited. The Department has chosen not to issue detailed regulations for this program. Specific information regarding Disaster Relief Employment-Assistance projects, including any guidance on cost classification issues, will be contained in application guidelines published by the Secretary. Until they are issued, an applicant for these funds should follow the guidelines and information published in the July 9, 1992 **Federal Register** regarding Emergency Dislocated Worker Projects.

PART 637—JOBS FOR EMPLOYABLE DEPENDENT INDIVIDUALS (JEDI)

Several commenters addressed this section of the interim final regulations.

The majority of the comments addressed inconsistencies in the numbering of the sections and in the cross-references. The part has been revised to correct the numbering.

In addition, several of the commenters raised questions concerning how the program can be implemented in the absence of any Congressional appropriation. While bonuses will not be awarded under title V of the Act until funds are appropriated by Congress, individuals who are eligible to be counted for title V purposes may be served under other titles of the Act. Since those individuals who would be eligible to be counted for the incentive bonuses under title V must also be eligible for, and have participated in, other activities under the Act, the costs associated with their participation in these activities would be charged to the appropriate program(s) and title(s) of the Act. If a State wishes to participate in the title V bonus program, if it is ever funded, the State may wish to keep track of the outcomes of training for individuals eligible to be counted for bonus purposes.

Effective Date

The Department recognizes that the regulations are being issued after the beginning of a program year. To avoid administrative difficulties, the Department has made the effective date of the regulations June 30, 1995, the beginning of Program Year 1995. This will give states and SDA's/SSG's time to plan for the changes that may result from the amendments made in this final rule. States or SDA's/SSG's are, of course, free to implement any of the changes that they find will benefit their programs earlier than the effective date and the Department will treat those changes as legally effective when adopted in any subsequent monitoring or audit resolution activity. Consistent with the Department's desire to enable states and SDAs to implement the beneficial changes in the final rule as quickly as they choose, the provisions of § 627.210, authorizing the Department to grant waivers of regulatory requirements are made effective within 30 days of publication to enable states to apply for waivers to be effective before the beginning of PY 1995.

Catalog of Federal Domestic Assistance Number

These programs are listed in the *Catalog of Federal Domestic Assistance* at No. 17–246, "Employment and Training Assistance—Dislocated Workers" (JTPA Title III Programs); and No.17–250, "Job Training Partnership Act (JTPA)" (JTPA Titles I, II, and V Programs).

List of Subjects in 20 CFR Parts 626 Through 631 and 637

Dislocated worker programs, Grant programs, Labor, Manpower training programs.

Final Rule

Accordingly, chapter V of title 20, Code of Federal Regulations is amended, as follows:

1. Part 626 is revised to read as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

Sec.

626.1 Scope and purpose of the Job Training Partnership Act.
626.2 Format of the Job Training Partnership Act regulations.
626.3 Purpose, scope, and applicability of the Job Training Partnership Act regulations.
626.4 Table of contents for the Job Training Partnership Act regulations.
626.5 Definitions.

Authority: 29 U.S.C. 1579(a); Sec. 6305(f), Pub. L. 100–418, 102 Stat. 1107; 29 U.S.C. 1791i(e).

§ 626.1 Scope and purpose of the Job Training Partnership Act.

It is the purpose of the Job Training Partnership Act (JTPA or the Act) to establish programs to prepare youth and

adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the Nation (section 2).

§ 626.2 Format of the Job Training Partnership Act regulations.

(a) Regulations promulgated by the Department of Labor to implement the provisions of the Act are set forth in parts 626 through 638 of title 20, chapter V, of the Code of Federal Regulations, with the exception of the veterans' employment program's chapter IX regulations of the Office of the Assistant Secretary for Veterans' Employment and Training, which are set forth at part 1005 of title 20.

(b) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, will be governed by the provisions of 29 CFR part 34 and will be administered by the Department of Labor (Department or DOL) Directorate of Civil Rights.

(c) General authority for the JTPA regulations is found at section 169 of the Act. Specific statutory authorities other than section 169 are noted throughout the JTPA regulations.

§ 626.3 Purpose, scope, and applicability of the Job Training Partnership Act regulations.

(a) Parts 626 through 638 of this chapter and part 1005 of chapter IX (Veterans' employment programs under title IV, part C of the Job Training Partnership Act) establish the Federal programmatic and administrative requirements for JTPA grants awarded by the Department of Labor to eligible grant recipients.

(b) Parts 626 through 638 of this chapter and part 1005 of chapter IX apply to recipients and subrecipients of JTPA funds.

§ 626.4 Table of contents for the Job Training Partnership Act regulations.

The table of contents for the regulations under the Job Training Partnership Act, 20 CFR parts 626–638 and 1005, is as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

Sec.
626.1 Scope and purpose of the Job Training Partnership Act.
626.2 Format of the Job Training Partnership Act regulations.
626.3 Purpose, scope and applicability of the Job Training Partnership Act regulations.
626.4 Table of contents for the Job Training Partnership Act regulations.
626.5 Definitions.

PART 627—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER THE ACT

Subpart A—Scope and Purpose

627.100 Scope and Purpose of Part 627.

Subpart B—Program Requirements

627.200 Governor/Secretary agreement.
627.205 Public service employment prohibition.
627.210 Nondiscrimination and nonsectarian activities.
627.215 Relocation.
627.220 Coordination with programs under title IV of the Higher Education Act including the Pell grant program.
627.225 Employment generating activities.
627.230 Displacement.
627.235 General program requirements.
627.240 On-the-job training.
627.245 Work experience.
627.250 Interstate agreements.

Subpart C—Payments, Supportive Services and Benefits and Working Conditions

627.300 Scope and purpose.
627.305 Payments.
627.310 Supportive Services.
627.315 Benefits and working conditions.

Subpart D—Administrative Standards

627.400 Scope and purpose.
627.405 Grant agreement and funding.
627.410 Reallotment and reallocation.
627.415 Insurance.
627.420 Procurement.
627.422 Selection of service providers.
627.423 Funding restrictions for "high-risk" recipients and subrecipients.
627.424 Prohibition of subawards to debarred and suspended parties.
627.425 Standards for financial management and participant data systems.
627.430 Grant payments.
627.435 Cost principles and allowable costs.
627.440 Classification of costs.
627.445 Limitations on certain costs.
627.450 Program income.
627.455 Reports required.
627.460 Requirements for records.
627.463 Public access to records.
627.465 Property management standards.
627.470 Performance standards.
627.471 Reorganization plan appeals.
627.475 Oversight and monitoring.
627.477 Governor's determination of substantial violation.
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627.481 Audit resolution.
627.485 Closeout.
627.490 Later disallowances and adjustments after closeout.
627.495 Collection of amounts due.

Subpart E—Grievances Procedures at the State and Local Level

627.500 Scope and purpose.
627.501 State grievance and hearing procedures for noncriminal complaints at the recipient level.
627.502 Grievance and hearing procedures for noncriminal complaints at the SDA and SSG levels.
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Subpart F—Federal Handling of Noncriminal Complaints and other Allegations

627.600 Scope and purpose.
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627.602 Resolution of investigative findings.
627.603 Special handling of labor standards violations under section 143 of the Act.
627.604 Alternative procedure for handling labor standards violations under section 143—Binding arbitration.
627.605 Special Federal review of SDA and SSG–level complaints without decision.
627.606 Grant officer resolution.
627.607 Grant Officer resolution of Governor's failure to promptly take action.

Subpart G—Sanctions for Violations of the Act

627.700 Scope and purpose.
627.702 Sanctions and corrective actions.
627.703 Failure to comply with procurement provisions.
627.704 Process for waiver of State liability.
627.706 Process for advance approval of a recipient's contemplated corrective actions.
627.708 Offset process.

Subpart H—Hearings by the Office of Administrative Law Judges

627.800 Scope and purpose.
627.801 Procedures for filing request for hearing.
627.802 Rules of procedure.
627.803 Relief.
627.804 Timing of decisions.
627.805 Alternative dispute resolution.
627.806 Other authority.

Subpart I—Transition Provisions

627.900 Scope and purpose.
627.901 Transition period.
627.902 Governor's actions.
627.903 Actions which are at the discretion of the Governor.
627.904 Transition and implementation.
627.905 Guidance on contracts and other agreements.
627.906 Determinations on State and SDA implementation.

PART 628—PROGRAMS UNDER TITLE II OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—Scope and Purpose

628.100 Scope and purpose of part 628.

Subpart B—State Planning

628.200 Scope and purpose.
628.205 Governor's coordination and special services plan.
628.210 State Job Training Coordinating Council.
628.215 State Human Resource Investment Council.

Subpart C—State Programs

628.300 Scope and purpose.
628.305 State distribution of funds.
628.310 Administration.
628.315 Education coordination and grants.
628.320 Services for older individuals.
628.325 Incentive grants, capacity building and technical assistance.

Subpart D—Local Service Delivery System

628.400 Scope and purpose.
628.405 Service delivery areas.
628.410 Private Industry Council.
628.415 Selection of SDA grant recipient and administrative entity.
628.420 Job training plan.
628.425 Review and approval.
628.426 Disapproval or revocation of the plan.
628.430 State SDA submission.

Subpart E—Program Design Requirements for Programs Under Title II of the Job Training Partnership Act

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628.505 Eligibility.
628.510 Intake, referrals, and targeting.
628.515 Objective assessment.
628.520 Individual service strategy.
628.525 Limitations.
628.530 Referrals of participants to non-title II programs.
628.535 Limitations on job search assistance.
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628.545 Linkages and coordination.
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Subpart F—The Adult Program

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628.605 Eligibility.
628.610 Authorized services.

Subpart G—The Summer Youth Employment and Training Program

628.700 Scope and purpose.
628.701 Program goals and objectives.
628.702 Enriched Educational Component.
638.703 Private Sector Summer Jobs.
628.704 Eligibility.
628.705 SYETP authorized services.
628.710 Period of program operation.

Subpart H—Youth Training Program

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628.804 Authorized services.

PART 629—[RESERVED]

PART 630—[RESERVED]

PART 631—PROGRAMS UNDER TITLE III OF THE JOB TRAINING PARTNERSHIP ACT

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631.4 Approved training rule.

Subpart B—Additional Title III Administrative Standards and Procedures

631.11 Allotment and obligation of funds by the Secretary.
631.12 Reallotment of funds by the Secretary.
631.13 Classification of costs at State and substate levels.
631.14 Limitations on certain costs.
631.15 Federal reporting requirements.
631.16 Complaints, investigations, and penalties.
631.17 Federal monitoring and oversight.
631.18 Federal by-pass authority.
631.19 Appeals.

Subpart C—Needs-Related Payments

631.20 Needs-related payments.

Subpart D—State Administration

631.30 Designation or creation and functions of a State dislocated worker unit or office and rapid response assistance.
631.31 Monitoring and oversight.
631.32 Allocation of funds by the Governor.
631.33 State procedures for identifying funds subject to mandatory Federal reallotment.
631.34 Designation of substate areas.
631.35 Designation of substate grantees.
631.36 Biennial State plan.
631.37 Coordination activities.
631.38 State by-pass authority.

Subpart E—State Programs

631.40 State program operational plan.
631.41 Allowable State activities.

Subpart F—Substate Programs

631.50 Substate plan.
631.51 Allowable substate program activities.
631.52 Selection of service providers.
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Subpart G—Federal Delivery of Dislocated Worker Services Through National Reserve Account Funds

631.60 General.
631.61 Application for funding and selection criteria.
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Subpart H—[Reserved]

Subpart I—Disaster Relief Employment Assistance

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631.82 Substate allocation.
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PART 632—INDIAN AND NATIVE AMERICAN EMPLOYMENT AND TRAINING PROGRAMS

Subpart A—Introduction

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632.3 Format for these regulations.
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Subpart B—Designation Procedures for the Native American Grantees

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632.35 Native American grantee contracts and subgrants.
632.36 Procurement standards.
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632.38 Classification of costs.
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632.40 Administrative staff and personnel standards.
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632.77 Participant eligibility determination.
632.78 Training activities.
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632.81 Payments to participants.
632.82 Benefits and working conditions for participants.
632.83 FICA.
632.84 Non-Federal status of participants.

632.85 Participant limitations.
632.86 Nondiscrimination and nonsectarian activities.
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632.124 Theft or embezzlement from employment and training funds; improper inducement; obstruction of investigations and other criminal provisions.
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Subpart G—[Reserved]

Subpart H—Job Training Partnership Act Programs Under Title IV, Section 401

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Subpart I—Summer Youth Employment and Training Programs

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632.255 Program planning.
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632.259 Vocational exploration program.
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PART 633—MIGRANT AND SEASONAL FARMWORKER PROGRAMS

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§ 626.5 Definitions.

In addition to the definitions contained in section 4 of the Act, the following definitions of terms used in the Act or parts 626–631 of this chapter apply as appropriate to programs under titles I, II, and III of the Act:

Accrued expenditures means charges made to the JTPA program. Expenditures are the sum of actual cash disbursements, the amount of indirect expense incurred, and the net increase (or decrease) in the amounts owed by the recipient for the goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Act means the Job Training Partnership Act.

ALJ means an administrative law judge in the Office of Administrative Law Judges of the U.S. Department of Labor.

Awarding agency means: (1) With respect to a grant, the Department of Labor; and (2) with respect to a subgrant or contract, the party that awarded the subgrant or contract.

Capacity building means the systematic improvement of job functions, skills, knowledge, and expertise of the personnel who staff and administer employment and training and other closely related human service systems. Capacity building is designed to enhance the effectiveness, to strengthen the caliber of customer services provided under the Act and other Federal, State, and local employment and training programs, and improve coordination among them. Capacity building includes curriculum development, appropriate training, technical assistance, staff development, and other related activities.

Chief elected official (CEO) means the official or officials, or their representatives, of the jurisdiction or jurisdictions which requested designation by the Governor as a service delivery area.

Commercial organizations means private for-profit entities.

Commercially available off-the-shelf training package means a training package sold or traded to the general public in the course of normal business operations, at prices based on established catalog or market prices. To be considered as "sold to the general public," the package must be regularly sold in sufficient quantities to constitute a real commercial market to buyers that must include other than JTPA programs. The package must include performance criteria pertaining to the delivery of the package which may include participant attainment of knowledge, skills or a job.

Contractor means the organization, entity, or individual that is awarded a procurement contract under the recipient's or subrecipient's procurement standards and procedures.

Cost means accrued expenditure.

Department means the U.S. Department of Labor.

DOL means the U.S. Department of Labor.

ETA means the Employment and Training Administration of the U.S. Department of Labor.

Family is defined at section 4(34) of the Act. An "individual with a disability" shall, for the purposes of income eligibility determination, be considered to be an unrelated individual who is a family unit of one, consistent with the definition of "economically disadvantaged" at section 4(8) of the Act. The Governor may provide interpretations of the term "family" related to how "dependent children" are defined for programs within a State, consistent with the Act, and all applicable rules and regulations, and State or local law. Such interpretations by the Governor may address the treatment of certain individuals who may need to be viewed discretely in the income eligibility determination process, such as runaways, emancipated youth, and court adjudicated youth separated from the family.

The phrase "living in a single residence" with other family members includes temporary, voluntary residence elsewhere (*e.g.*, attending school or college, or visiting relatives). It does not include involuntary temporary residence elsewhere (*e.g.*, incarceration, or placement as a result of a court order).

Family income means "income" as defined by the Department of Health and Human Services in connection with the annual poverty guidelines. Such income shall not include unemployment compensation, child support and public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, Emergency Assistance money payments, and non-federally funded General Assistance or General Relief money payments), as provided for at section 4(8) of the Act. In addition, such income shall also exclude foster child care payments, educational financial assistance received under title IV of the Higher Education Act (20 U.S.C. 1087), as amended by section 479(B) of the Higher Education Act Amendments of 1992), needs-based scholarship assistance, and income earned while on active military duty and other benefit payments specified at 38 U.S.C. 4213, items (1) and (3). The Governor may, for the purposes of determining income eligibility for services to older individuals under section 204(d)(5) of the Act, exclude up to 25 percent of Social Security and Old Age Survivors' Insurance benefit payments under title II of the Social Security Act, (42 U.S.C., section 401, et seq.) from the definition of family income. In addition, when a Federal statute specifically provides that income or payments received under such statute shall be excluded in determining eligibility for and the level of benefits received under any other federal statute, such income or payments shall be excluded in JTPA eligibility determinations.

Funding period means the period of time when JTPA funds are available for expenditure. Unless a shorter period of time is specified in a title III discretionary award, the JTPA funding period is the 3-year period specified in JTPA section 161(b); the program year in which Federal funds are obligated to the recipient, and the two succeeding program years.

Governor means, in addition to the definition at section 4(9) of the Act, the recipient of JTPA funds awarded to the State under titles I through III.

Grant means an award of JTPA financial assistance by the U.S. Department of Labor to an eligible JTPA recipient. (Also, see §§ 627.405 and 627.430 of these regulations).

Grantee means the recipient.

Individual service strategy (ISS) is defined in § 628.520 of this chapter.

Job search assistance (also including *job search skills training* and *job club activities*) means the provision of instruction and support to a participant to give the participant skills in acquiring full time employment. The services provided may include, but are not limited to, resume writing, interviewing skills, labor market guidance, telephone techniques, information on job openings, and job acquisition strategies, as well as the provision of office space and supplies for the job search.

Job Training Partnership Act means Public Law (Pub. L.) 97–300, as amended, 29 U.S.C. 1501, et seq.

JTPA means the Job Training Partnership Act.

Nontraditional employment, as applied to women, means occupations or fields of work where women comprise less than 25 percent of the individuals employed in such occupation or field of work as provided periodically by the Department in the **Federal Register**. (Pub. L. 102–235, Nontraditional Employment for Women Act).

OALJ means the Office of Administrative Law Judges of the U.S. Department of Labor.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a funding period that will require payment by the recipient or subrecipient during the same or a future period.

OIG means the Office of Inspector General of the U.S. Department of Labor.

PIC means a private industry council.

Participant means an individual who has been determined to be eligible to participate in and who is receiving services (except post-termination services authorized under sections 204(c)(4) and 264(d)(5) and followup services authorized under section 253(d)) under a program authorized by the JTPA. Participation shall be deemed to commence on the first day, following determination of eligibility, on which the participant began receiving subsidized employment, training, or other services provided under the JTPA. (section 4(37)).

Program year means the 12-month period beginning July 1 of the indicated year.

Recipient means the entity to which a JTPA grant is awarded directly from the Department of Labor to carry out the JTPA program. The recipient is the entire legal entity that received the award and is legally responsible for carrying out the JTPA program, even if only a particular component of the entity is designated in the grant award document. For JTPA grants under titles I, II and III, except for certain discretionary grants awarded under title III, part B, the State is the recipient.

SDA means a service delivery area designated by the Governor pursuant to section 101(a)(4) of the Act. As used in these regulations, SDA may also refer to the entity that administers the JTPA program within the designated area.

SDA grant recipient means the entity that receives JTPA funds for a service delivery area directly from the recipient.

Secretary means the Secretary of Labor.

Section, as used in this chapter, means a section of the Act unless the text specifically indicates otherwise.

Service provider means a public agency, private nonprofit organization, or private-for-profit entity that delivers educational, training, employment or supportive services to JTPA participants. Awards to service providers may be made by subgrant, contract, subcontract, or other legal agreement.

Stand-in costs means costs paid from non-Federal sources that a recipient proposes to substitute for Federal costs that have been disallowed as a result of an audit or other review. In order to be considered as valid substitutions, the costs (1) shall have been reported by the grantee as uncharged program costs under the same title and in the same program year in which the disallowed costs were incurred (2) shall have been incurred in compliance with laws, regulations, and contractual provisions governing JTPA, and (3) shall not result in a violation of the applicable cost limitations.

State is defined at section 4(22) of the Act. For cash payment purposes, the definition of "State" contained in the Department of the Treasury regulations at 31 CFR 205.3 shall apply to JTPA programs.

State council means the State Job Training Coordinating Council (SJTCC) or, in a State with a Human Resource Investment Council (HRIC) pursuant to § 628.215 of this chapter, the HRIC.

Subgrant means an award of JTPA financial assistance in the form of money, or property in lieu of money, made under a grant by a recipient to an eligible subrecipient. It also means a subgrant award of JTPA financial assistance by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the

agreement is called a contract, but does not include procurement purchases from vendors nor does it include any form of assistance received by program participants.

Subgrantee means a subrecipient.

Subrecipient means the legal entity to which a subgrant is awarded and which is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided. For JTPA purposes, distinguishing characteristics of a subrecipient include items such as determining eligibility of applicants, enrollment of participants, performance measured against meeting the objectives of the program, responsibility for programmatic decisionmaking, responsibility for compliance with program requirements, and use of the funds awarded to carry out a JTPA program or project, as compared to providing goods or services for a JTPA program or project (vendor). Depending on local circumstances, the PIC, local elected official, or administrative entity may be a subrecipient. SDA grant recipients and JTPA title III substate grantees are particular types of subrecipients.

Substate grantee (SSG) means that agency or organization selected to administer programs pursuant to section 312(b) of the Act. The substate grantee is the entity that receives JTPA title III funds for a substate area directly from the Governor.

Technical assistance is a facet of capacity building which may include but is not limited to information sharing, dissemination and training on program models and job functions; peer-to-peer networking and problem solving; guides; and interactive communication technologies.

Title, as used in this chapter, means a title of the Act, unless the text of the regulation specifically indicates otherwise.

Vendor means an entity responsible for providing generally required goods or services to be used in the JTPA program. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program. Distinguishing characteristics of a vendor include items such as: Providing the goods and services within normal business operations; providing similar goods or services to many different purchasers, including purchasers outside the JTPA program; and operating in a competitive environment. A vendor is not a subrecipient and does not exhibit the distinguishing characteristics attributable to a subrecipient, as defined above. Any entity directly involved in the delivery of program services not available to the general public, with the exception of an employer providing on-the-job training, shall be considered a subrecipient rather than a vendor.

Wagner-Peyser Act means 29 U.S.C. 49, et seq.

2. Part 627 is revised to read as follows:

PART 627—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER TITLES I, II, AND III OF THE ACT

Subpart A—Scope and Purpose

627.100 Scope and purpose of this Part 627.

Subpart B—Program Requirements

627.200 Governor/Secretary agreement.
627.201 Waivers.
627.205 Public service employment prohibition.
627.210 Nondiscrimination and nonsectarian activities.
627.215 Relocation.
627.220 Coordination with programs under title IV of the Higher Education Act including the Pell grant program.
627.225 Employment generating activities.
627.230 Displacement.
627.235 General program requirements.
627.240 On-the-job training.
627.245 Work experience.
627.250 Interstate agreements.

Subpart C—Payments, Supportive Services, and Benefits and Working Conditions

627.300 Scope and purpose.
627.305 Payments.
627.310 Supportive services.
627.315 Benefits and working conditions.

Subpart D—Administrative Standards

627.400 Scope and purpose.
627.405 Grant agreement and funding.
627.410 Reallotment and reallocation.
627.415 Insurance.
627.420 Procurement.
627.422 Selection of service providers.
627.423 Funding restrictions for "high-risk" recipients and subrecipients.
627.424 Prohibition of subawards to debarred and suspended parties.
627.425 Standards for financial management and participant data systems.
627.430 Grant payments.
627.435 Cost principles and allowable costs.
627.440 Classification of costs.
627.445 Limitations on certain costs.
627.450 Program income.
627.455 Reports required.
627.460 Requirements for records.
627.463 Public access to records.
627.465 Property management standards.
627.470 Performance standards.
627.471 Reorganization plan appeals.
627.475 Oversight and monitoring.
627.477 Governor's determination of substantial violation.
627.480 Audits.
627.481 Audit resolution.
627.485 Closeout.
627.490 Later disallowances and adjustments after closeout.
627.495 Collection of amounts due.

Subpart E—Grievances Procedures at the State and Local Level

627.500 Scope and purpose.
627.501 State grievance and hearing procedures for noncriminal complaints at the recipient level.
627.502 Grievance and hearing procedures for noncriminal complaints at the SDA and SSG levels.
627.503 Recipient-level review.
627.504 Noncriminal grievance procedure at employer level.

Subpart F—Federal Handling of Noncriminal Complaints and Other Allegations

627.600 Scope and purpose.
627.601 Complaints and allegations at the Federal Level.
627.602 Resolution of investigative findings.
627.603 Special handling of labor standards violations under section 143 of the Act.
627.604 Alternative procedure for handling labor standards violations under section 143—Binding arbitration.
627.605 Special Federal review of SDA- and SSG-level complaints without decision.
627.606 Grant officer resolution.
627.607 Grant Officer resolution of Governor's failure to promptly take action.

Subpart G—Sanctions for Violations of the Act

627.700 Scope and purpose.
627.702 Sanctions and corrective actions.
627.703 Failure to comply with procurement provisions.
627.704 Process for waiver of State liability.
627.706 Process for advance approval of a recipient's contemplated corrective actions.
627.708 Offset process.

Subpart H—Hearings by the Office of Administrative Law Judges

627.800 Scope and purpose.
627.801 Procedures for filing request for hearing.
627.802 Rules of procedure.
627.803 Relief.
627.804 Timing of decisions.
627.805 Alternative dispute resolution.
627.806 Other authority.

Subpart I—Transition Provisions

627.900 Scope and purpose.
627.901 Transition period.
627.902 Governor's actions.
627.903 Actions which are the discretion of the Governor.
627.904 Transition and implementation.
627.905 Guidance on contracts and other agreements.
627.906 Determinations on state and SDA implementation.

Authority: 29 U.S.C. 1579(a); Sec. 6305(f), Pub. L. 100–418, 102 Stat. 1107; 29 U.S.C. 1791i(e).

Subpart A—Scope and Purpose

§ 627.100 Scope and purpose of this part 627.

(a) This part sets forth requirements for implementation of programs under titles I, II, and III of the Job Training Partnership Act.

(b) Subpart B provides general program requirements that apply to all programs under the titles I, II, and III of the Act, except as provided elsewhere in the Act or this chapter. These requirements include the Governor/Secretary agreement, the nondiscrimination and nonsectarian activity provisions, coordination provisions with Higher Education Act programs, and the prohibitions on public service employment, relocation assistance, displacement, and employment generating activities. This subpart also sets forth comprehensive rules for on-the-job training for JTPA participants as well as for work experience.

(c) Subpart C sets forth requirements for allowable payments to JTPA participants.

(d) Subpart D establishes the administrative and financial standards and requirements that apply to funds received under the Act.

(e) Subpart E establishes the procedures that apply to the handling of noncriminal complaints under the Act at the Governor, the SDA, and title III SSG levels.

(f) Subpart F establishes the procedures that apply to the filing, handling, and review of complaints at the Federal level.

(g) Subpart G sets forth the provisions that apply to the sanctions and corrective actions that may be imposed by the Secretary for violations of the Act, regulations, or grant terms and conditions.

(h) Subpart H sets forth procedures that apply to hearing by the Office of the Administrative Law Judges.

Subpart B—Program Requirements

§ 627.200 Governor/Secretary agreement.

(a)(1) To establish a continuing relationship under the Act, the Governor and the Secretary shall enter into a Governor/Secretary agreement. The agreement shall consist of a statement assuring that the State shall comply with (i) the Job Training Partnership Act and all applicable rules and regulations and (ii) the Wagner-Peyser Act and all applicable rules and regulations. The agreement shall specify that guidelines, interpretations, and definitions, adopted and issued by the Governor and identified pursuant to section 124 of the Act, shall, to the extent that they are consistent with the Act and applicable rules and regulations, be accepted by the Secretary.

(2) Either the Governor or the Secretary may seek a modification, revision, or termination of the agreement at any time, to be effective at the end of a program year.

(b) Except as provided at part B of title III of the Act and part 631, subpart G, of this chapter, the State shall be the grant recipient of JTPA funds awarded under titles I, II, and III.

§ 627.201 Waivers.

(a)(1) The Governor may request, and the Secretary may grant, a waiver of specific provisions of these regulations to the extent that such request is consistent with the provisions of the Act.

(2) In requesting a waiver under paragraph (a)(1) of this section, the Governor shall demonstrate how it will either improve the targeting of services to the hard to serve, increase the level of basic and occupational skills training provided by the JTPA program in the State, contribute to the provision of academic enrichment services to youth, promote coordination of JTPA programs with other human resource programs, or substantially improve the job placement outcomes of the JTPA program.

(3) Waivers granted by the Secretary shall be effective for no more than four years from the date the waiver is granted.

§ 627.205 Public service employment prohibition.

No funds available under titles I, II–A, II–C, or III–A of the Act may be used for public service employment (sections 141(p) and 314(d)(2)).

§ 627.210 Nondiscrimination and nonsectarian activities.

(a)(1) Recipients, SDA grant recipients, title III substate grantees, and other subrecipients shall comply with the nondiscrimination provisions of section 167 of the Act.

(2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the provisions of 29 CFR part 34 and are administered and enforced by the DOL Directorate of Civil Rights.

(3) Funds may be used to meet a recipient's or subrecipient's obligation to provide physical and programmatic accessibility and reasonable accommodation in regard to the JTPA program as required by Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

(b) The employment or training of participants in sectarian activities is prohibited.

§ 627.215 Relocation.

(a) No funds provided under the Act shall be used, or proposed for use, to encourage or to induce the relocation of an establishment, or part thereof, that result in the loss of employment for any employee or such establishment at the original location.

(b) For 120 days after the commencement or the expansion of commercial operations of a relocating establishment, no funds provided under this Act shall be used for customized or skill training, on-the-job training, or company-specific assessments of job applicants or employees, for any relocating establishment or part thereof at a new, or expanded location, if the relocation of such establishment or part thereof results in a loss of employment for any employee of such establishment at the original location.

(c) For the purposes of this section, *relocating establishment* means a business entity, including a successor-in-interest, which is moving any operations from a facility in one labor market area within the United States and its territories to a new or expanding facility in another labor market area. For the purposes of this section, a labor market area is an area within which individuals can readily change employment without changing their place of residence.

(d) *Pre-award review.* To verify that an establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review procedures developed by the State shall be completed and documented jointly by the service delivery area or substate grantee and the establishment as a prerequisite to JTPA assistance. The review should include names under which the establishment does business, including successors-in-interest; the name, title, and address of the company official certifying the information; the name and address of the facility in the other geographic location which is being closed or from which business is being transferred; a statement from the employer about job losses at that location; the nature of the products or business being transferred; the date the facility will commence or expand operations, and whether JTPA assistance is sought in connection with past or impending job losses at other facilities.

(e) *Violations and sanctions.* The Department will promptly review and take appropriate action with regard to alleged violations of the provisions of paragraphs (a) and (b) of this section. Procedures for the investigation and resolution of the violations are provided for under subpart F of this part. Sanctions and remedies are provided for under subpart G of this part.

§ 627.220 Coordination with programs under title IV of the Higher Education Act including the Pell grant program.

(a) *Coordination.* Financial assistance programs under title IV of the Higher Education Act of 1965, as amended (HEA) (the Pell Grant program, the Supplemental Education Opportunity Grant program, the Work-study program, and Federal loan programs such as Federal Perkins Loans. Federal Stafford Loans and Federal Direct Stafford Loans) provide student financial aid and are available to JTPA participants enrolling in postsecondary level education programs. SDA's and title III SSG's shall establish coordination procedures and contractual safeguards to ensure that JTPA funds are used in addition to funds otherwise available in the area and are coordinated with these funding sources.

(b) *Affordable programs.* (1) The SDA shall assist the participant early in the objective assessment, as appropriate, to establish eligibility for Pell Grants, student loans and other forms of financial aid.

(2) The SDA or SSA shall record in the ISS or participant record the participant's training-related financial assistance needs and the mix of JTPA and other funds, including Pell Grant funds (sections 141(b), 107(b), 205(b) and 265(b)).

(3) The SDA shall ensure, to the extent practicable, that available Federal, State, and local resources are coordinated sufficiently to meet the training and education-related costs of services, so that the participant can afford to complete the agreed-upon program successfully.

(4) Participants shall not be required to apply for or access student loans, or incur personal debt as a condition of JTPA participation.

(c) *Information sharing.* To prevent duplication of funding and to streamline the tracking of the participant's financial needs and use of funds when HEA, title IV programs are involved, contracts and agreements with educational institutions shall require the educational institution's financial aid officer to inform the SDA's/SSG's of the amounts and disposition of any HEA, title IV awards and other types of financial aid to each JTPA participant awarded after the enrollment of the participant, as part of a continuing, regular information sharing process (section 141(b)).

§ 627.225 Employment generating activities.

(a)(1) No funds available under the Act shall be used for employment generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, or similar activities.

(2) No funds available under titles I, II, or III of the Act shall be used for foreign travel for employment generating activities, economic development activities, or similar activities.

(b) JTPA funds may be used for normal employer outreach and job development activities including, but not limited to: contacts with potential employers for the purpose of placement of JTPA participants; participation in business associations (such as chambers of commerce); JTPA staff participation on economic development boards and commissions, and work with economic development agencies, to provide information about JTPA and to assist in making informed decisions about community job training needs; subscriptions to relevant publications; general dissemination of information on JTPA programs and activities; labor market surveys; and development of on-the-job training (OJT) opportunities, as defined in § 627.240; and other allowable JTPA activities in the private sector.

§ 627.230 Displacement.

(a) No currently employed worker shall be displaced by any participant (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits).

(b) No participant shall be employed or job opening filled: (1) When any other individual is on layoff from the same or any substantially equivalent job, or

(2) When the employer has terminated any regular employee without cause or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under the Act.

(c) *Violations and sanctions.* The Department will promptly review and take appropriate action with regard to alleged violations of the provisions of paragraphs (a) and (b) of this section. Procedures for the investigation and resolution of violations are provided for under subpart F of this part. Sanctions and remedies are provided for under subpart G of this part.

§ 627.235 General program requirements.

(a) The requirements set forth in sections 141, 142 and 143 of the Act apply to all programs under titles I, II, and III of the Act, except as provided elsewhere in the Act.

(b) Recipients shall ensure that an individual enrolled in a JTPA program meets the requirements of section 167(a)(5) of the Act, Section 3 of the Military Selective Service Act (50 U.S.C. App. 453) and other requirements applicable to programs funded under the specific section or title of the Act under which the participant is enrolling (section 604).

(c) Recipients shall ensure that individuals are enrolled within 45 days of the date of eligibility determination or a new eligibility determination (including new application, if necessary) shall be made, except that eligible summer program applicants under title II-B may be enrolled within 45 days into a summer youth enrollee pool, and no subsequent eligibility determination need be made prior to participation during the period of that summer program. In addition, the 45-day enrollment requirement shall not apply for individuals who have a valid certificate of continuing eligibility under the title III program, as described in § 631.3 and § 631.53 of this chapter.

(d) Programs operated under titles I, II, and III of the Act are not subject to the provisions of 29 CFR part 97, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," except as otherwise explicitly provided in this chapter.

(e) If a recipient or SDA imposes a requirement that is in addition to the provisions of the Act and these regulations relating to the administration and operation of programs funded by the Act, the recipient or SDA shall identify the requirement as a State- or SDA-imposed requirement (section 124).

§ 627.240 On-the-job training.

(a) *General—(1) On-the-job training* (OJT) means training by an employer in the private or public sector given to a participant who, after objective assessment, and in accordance with the ISS, has been referred to and hired by the employer following the development of an agreement with the employer to provide occupational training in exchange for reimbursement of the employer's extraordinary costs.

On-the-job training occurs while the participant is engaged in productive work which provides knowledge and skills essential to the full and adequate performance of the job.

(2) This does not preclude a participant who has been trained by one employer from ultimately being placed in a comparable training-related position with another employer.

(3) On-the-job training may be sequenced with or accompanied by other types of training such as classroom training or literacy training.

(b) *Duration of OJT.*—(1) OJT authorized for a participant shall be limited to a period not in excess of that required for the participant to acquire the skills needed for the OJT position. Except as described in paragraph (b) (3) of this section, the period of reimbursement to the employer under an OJT agreement shall not exceed 6 months of training.

(2) The 6-month duration of OJT may be expressed as a number of hours, days, or weeks the participant is expected to work in a 6-month period if the participant works full-time.

(3) In the event that a participant's regular employment is less than full-time and less than 500 hours of OJT has occurred by the end of 6 months, that participant may remain in OJT until 499 hours OJT hours have occurred.

(4)(i) Recipients shall develop policies and procedures for determining the average training duration for occupations including to reflect an individual participant's need for additional training time, or reduction in training time to reflect the individual participant's partial acquisition of needed skills. (In no case should an individual who is fully skilled in an occupation be placed in OJT in that occupation.)

(ii) In determining the average training time, consideration should be given to recognized reference materials, such as the "Dictionary of Occupational Titles" (DOT) and employer training plans. Such materials need not be limited to the DOT, however.

(5) On-the-job training is encouraged, but not required, in all occupations with significant training content, particularly in higher-skill occupations appropriate to the participant's needs. Training plans may be developed that recognize the full duration of the OJT period necessary for the full and adequate performance of the job, but the period of reimbursement may not exceed the duration in paragraph (a)(1) or (a)(2) of this section.

(6) When the OJT period in a given occupation for a participant for whom the ISS identifies OJT as appropriate varies from the average for that occupation, the basis for the variation shall be recorded in the ISS.

(c) *On-the-job training payments to employers.* (1) On-the-job training payments to employers are deemed to be in compensation for the extraordinary costs associated with training participants and in compensation for the costs associated with the lower productivity of such participants. Employers shall not be required to document such extraordinary costs or lower productivity (section 141(g)(1)).

(2)(i) On-the-job training payments to employers shall not, during the period of such training, average more than 50 percent of the wages paid by the employer to OJT participants.

(ii) On-the-job training payments to employers may be based upon scheduled raises or regular pay increases.

(iii) On-the-job training payments may not be based on overtime, shift differential, premium pay and other nonregular wages paid by the employer to participants.

(iv) On-the-job training payments may not be based upon periods of time such as illness, holidays, plant downtime or other events in which no training occurs.

(3) Employers which provide classroom or vestibule training to meet the specific training needs of JTPA participants to equip them with education and knowledge necessary to the OJT occupation may be separately reimbursed for training costs, such as instructors and training material.

(d) *On-the-job training agreements.* (1) Each OJT agreement shall, at a minimum, specify the occupation(s) for which training is to be provided, the duration of the training, the number of participants to be trained in each occupation, wage rates to be paid, the rate of reimbursement, the maximum amount of reimbursement, a job description or training outline that reflects what the participant will learn, and any other separate classroom training that may be provided.

(2) The agreement shall provide that the employer will maintain and make available time and attendance, payroll and other records to support amounts reimbursed under OJT contracts.

(e) *Labor standards.* OJT participants shall be compensated by the employer at the same rates, including periodic increases, as similarly situated employees, but in no event less than the higher of the minimum wage specified under the Fair Labor Standards Act of 1938, as amended or the applicable State or local minimum wage. Participants must receive the same benefits and have the same working conditions as similarly situated employees.

(f) *Suitability of participants.* (1) Only those participants who have been assessed and for whom OJT has been determined as an appropriate activity in the participant's ISS may be referred to an employer for participation in OJT.

(2) An individual referred to the JTPA program by an employer may be enrolled in an OJT program with such employer only upon completion of the objective assessment and individual service strategy in which OJT with such employer has been determined to be an appropriate activity and only if the employer has not already hired such individual.

(3) OJT with the participant's previous or current employer in the same, a similar, or an upgraded job is not permitted.

(g) *Monitoring.* (1) OJT agreements shall be monitored periodically on-site by the entity issuing the contract to assure that the validity and propriety of amounts claimed for reimbursement are substantiated by payroll and time and attendance records and that the training is being provided as specified in the agreement.

(2) Brokering contractors shall conduct on-site monitoring of the OJT employers and other subcontractors to verify compliance with subcontract terms before making payments.

(3) Nothing in this paragraph (g) shall relieve recipients and SDA's from responsibility for monitoring expenditures under the Act.

(h) *Employer eligibility.* (1) OJT agreements shall not be entered into with employers which, under previous agreements, have exhibited a pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages, benefits and working conditions at the same level and to the same extent as similarly situated employees. This prohibition does not apply to OJT agreements for youth in the program under title II–B who are returning to school.

(2) Governors shall issue procedures and criteria to implement the requirement in paragraph (h)(1) of this section, which shall specify the duration of the period of loss of eligibility. The procedures and criteria shall provide that situations in which OJT participants quit voluntarily, are terminated for cause, or are released due to unforeseeable changes in business conditions will not necessarily result in termination of employer eligibility.

(i) *Brokered OJT.* Each agreement with an OJT employer that is written by a

brokering contractor (not written directly by the SDA/SSA or recipient) shall specify and clearly differentiate the services to be provided by the brokering contractor (including but not limited to outreach, recruitment, training, counseling, assessment, placement, monitoring, and followup), the employer and other agencies and subcontractors, including services provided with or without cost by other agencies or subcontractors.

(j) *Youth OJT.* OJT conducted under title II–C shall meet the requirements of subpart H of part 628 of this chapter (628.804), as well as the requirements of this section. Where OJT is provided to youth concurrently enrolled under titles II–B and II–C, the source of funding for the OJT shall govern which requirements apply.

(k) *Employment and employee leasing agencies.*

(1) *Definition.* The terms *employment agency* and *employee leasing agency* mean an employer that provides regular, on-going employment (i.e., not probationary, temporary, or intermittent employment) in a specific occupation and, for a fee, places employees at the worksite of another employer to perform work for such employer.

(2) Employment and employee leasing agencies that meet the other requirements of this section may be eligible for OJT agreements when the agreement specifies the source of training and specifies that the payments are for the extraordinary training costs of the entity providing the training.

§ 627.245 Work experience.

(a) *Definition.—Work Experience* means a short-term or part-time training assignment with a public or private nonprofit organization for a participant who needs assistance in becoming accustomed to basic work requirements. It is prohibited in the private for-profit sector.

(b) *Suitability.* Work experience should be designed to promote the development of good work habits and basic work skills.

(c) *Duration of work experience.* Participation in work experience shall be for a reasonable length of time, based on the needs of the participant. The duration of work experience shall be recorded in the participant's ISS.

(d) *Combination with other services.* Work experience under titles II–A and C shall be accompanied either concurrently or sequentially by other services designed to increase the basic education and/or occupational skills of the participant, as recorded in the ISS.

(e) Work experience is not an allowable activity under title III of the Act. (Sections 204(b) and (c), 253(a), and 264 (c) and (d).)

§ 627.250 Interstate agreements.

The Secretary hereby grants authority to the several States to enter into interstate agreements and compacts in accordance with section 127 of the Act and, as specified in § 627.420(g), Procurement.

Subpart C—Payments, Supportive Services, and Benefits and Working Conditions

§ 627.300 Scope and purpose.

This subpart sets forth requirements for allowable payments to JTPA participants under titles I and II. These include needs-based payments under title II, incentive and bonus payments under title II, work-based training payments under title II, and payments for combined activities under title II. Requirements for supportive services under titles I, II, and III, including financial assistance and needs-related payments, are also included in this subpart. This subpart also sets forth rules for benefits and working conditions for JTPA participants. These include requirements for: Compliance with applicable labor laws; workers' compensation coverage or medical and accident insurance where there is no State workers' compensation coverage; and working conditions which are not detrimental to the participant's health and safety.

§ 627.305 Payments.

(a)(1) *General.* Allowable types of payments which may be made to participants are: Needs-based payments for eligible individuals in programs under title II; incentive and bonus payments for participants in title II programs; work-based training payments for work experience, entry employment experience, internships and other work-based training activities; payments for participants in title II–B activities; and training payments for combined activities in title II programs. These payments shall be made in accordance with paragraphs (b) through (f) of this section.

(2) A participant shall receive no payments for training activities in which the participant fails to participate without good cause (section 142(a)(1)).

(3) The SDA shall ensure to the extent possible that similarly situated participants receive similar payments.

(4) Payments to participants, broadly defined for this subsection as all funds distributed to participants except OJT wages, shall not be considered as income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than as provided under the Social Security Act (section 142(b)).

(5) The SDA is responsible for meeting any applicable Internal Revenue Service and Fair Labor Standards Act requirements (section 142(a)(3)).

(6) An SDA may set fixed levels for any non-wage payment.

(b) *Needs-based payments.* (1) Participants in programs funded under title II may receive needs-based payments when such payments are necessary to enable the individual to participate in training programs. Payments shall be made in accordance with a locally developed policy which is included in the job training plan approved by the Governor.

(2) The individual determination of participants' needs-based payments and the amount of such payments shall be based upon the results of the continuing objective assessment and determined in accordance with a locally developed policy. The provisions and amount of such payments shall be recorded in the ISS.

(c) *Incentive and bonus payments.* Participants in programs funded under title II may receive incentive and bonus payments based on their attendance and performance in accordance with a locally developed policy. The policy shall be described in the job training plan approved by the Governor and shall include a specification of the requirements for the receipt of such payments and the level of payments.

(d) *Work-based training payments.* Individuals participating in work experience, in entry employment experience programs, in limited internships for youth in the private sector, or in other work-based training activities under title II of the Act may receive work-based training payments which may be wages.

(e) Summer participants may receive training payments for participation in activities under title II–B.

(f) *Training payments for combined activities.* For title II programs, participants in one of the activities described in paragraph (d) of this section for which work-based training payments are payable for more than 50 percent of the participant's time, including classroom training, may also receive training payments for hours of participation in classroom training.

§ 627.310 Supportive services.

(a)(1) The SDA or SSG shall develop a policy on supportive services in

accordance with the definition at section 4(24) of the Act. This policy shall be included in the job training plan approved by the Governor (section 4(24)). Supportive services may be provided to participants through in-kind or cash assistance, or by arrangement with another human service agency when necessary to enable an individual who is eligible for training under a JTPA assisted program, but who cannot afford to pay for such services, to participate in such JTPA-assisted program.

(2) In the event that an SDA or SSG adopts a policy of providing a fixed reimbursement for a particular supportive service to all participants, it shall, as part of its policy, state the rationale for its choice and the fixed amounts it has adopted.

(b) Limited supportive services may be provided to applicants in order to permit them to complete the application process.

(c) Necessary supportive services shall be recorded in a participant's ISS under title II or should be recorded in a participant's individual readjustment plan under title III. When supportive services are provided in accordance with paragraph (b) of this section, information on any supportive service provided may be maintained for future inclusion in an ISS.

(d) The SDA or SSG shall ensure, to the extent possible, that similarly situated participants receive similar supportive services.

(e) For title II participants, necessary supportive services (with the exception of financial assistance) may be provided for up to one year following termination as post-termination or followup services (sections 4(24), 204(b)(2)(J), and 204(c)(4)). For title III participants, the provisions at section 314(c)(15) of the Act shall apply.

(f) An SDA or SSG may set fixed levels of benefit for any supportive service.

(g)(1) For purposes of title II, financial assistance is defined as a general supportive service payment for the purpose of retaining participants in training.

(2) Financial assistance payments may be considered to be necessary for participation in training for title II participants, *i.e.*, a separate, individual determination of need is not necessary.

(h) *Needs-related payments.* The requirements pertaining to needs-related payments provided for under section 315(b) under title III of the Act, are described in part 631 of this chapter.

§ 627.315 Benefits and working conditions.

(a) In the development and conduct of programs funded under the Act, SDA's and SSG's shall ensure that participants are not assigned to work for employers which do not comply with applicable labor laws, including wage and hour, occupational health and safety, and child labor laws (29 CFR part 570).

(b) To the extent that a State workers' compensation law is applicable, workers' compensation benefits in accordance with such law shall be available with respect to injuries suffered by participants. Where a State's workers' compensation law is not applicable, recipients and subrecipients shall secure insurance coverage for injuries suffered by such participants in all JTPA work-related activities. Income maintenance coverage (e.g., contributions for unemployment compensation), is not required for participants (section 143(a)(3)).

(c) Where a participant is engaged in activities not covered under the Occupational Safety and Health Act of 1970, as amended, the participant shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous, or dangerous to the participant's health or safety. A participant employed or trained for inherently dangerous occupations, e.g., fire or police jobs, shall be assigned to work in accordance with reasonable safety practices (section 143(a)(2)).

Subpart D—Administrative Standards

§ 627.400 Scope and purpose.

This subpart establishes the administrative and financial standards and requirements that apply to funds received under the Act.

§ 627.405 Grant agreement and funding.

(a)(1) Pursuant to § 627.200 of this part and the Governor/Secretary agreement, each program year there will be executed a grant agreement signed by the Governor or the Governor's designated representative and the Secretary or the Secretary's designated representative (Grant Officer).

(2) The grant agreement described in paragraph (a)(1) of this section shall be the basis for Federal obligation of funds for the program year for programs authorized by titles I, II, and III, including any title III discretionary projects awarded to the State, and such other funds as the Secretary may award under the grant.

(b) *Funding.* The Secretary shall allot funds to the States in accordance with sections 162, 202, 252, 262, and 302 of the Act. The Secretary shall obligate such allotments through Notices of Obligation.

(c) Pursuant to instructions issued by the Secretary, additional funds may be awarded to States for the purpose of carrying out the administrative activities described in section 202(c)(1)(A) when a State receives an amount under such section that is less than $500,000 (section 453(d)).

(d) *Termination.* Each grant shall terminate when the period of availability for expenditure (funding period), as specified in section 161(b) of the Act, has expired and shall be closed in accordance with § 627.485, of this part, Closeout.

§ 627.410 Reallotment and reallocation.

(a)(1) The Governor shall reallocate title II–A and II–C funds among service delivery areas within the State in accordance with the provisions of section 109(a) of the Act. The amount to be reallocated, if any, shall be based on SDA obligations of the funds allocated separately to each SDA for title II–A or II–C programs.

(2) The Governor shall not establish reallocation requirements that are inconsistent with the provisions of section 109(a) of the Act.

(b) The Secretary shall reallot title II–A and II–C funds among the States in accordance with the provisions of section 109(b) of the Act. The amounts to be reallotted, if any, shall be based on State obligations of the funds allotted separately to each State for title II–A or II–C programs, excluding funds allotted under section 202(c)(1)(D) and the State's obligation of such funds.

(c) Title III funds shall be reallotted by the Secretary in accordance with section 303 of the Act.

§ 627.415 Insurance.

(a) *General.* Each recipient and subrecipient shall follow its normal insurance procedures except as otherwise indicated in this section and § 627.465, Property Management Standards.

(b) DOL assumes no liability with respect to bodily injury, illness, or any other damages or losses, or with respect to any claims arising out of any activity under a JTPA grant or agreement whether concerning persons or property in the recipient's or any subrecipient's organization or that of any third party

§ 627.420 Procurement.

(a) *General.* (1) For purposes of this section, the term *procurement* means the process which leads to any award of JTPA funds.

(2) The Governor, in accordance with the minimum requirements established

in this section, shall prescribe and implement procurement standards to ensure fiscal accountability and prevent waste, fraud, and abuse in programs administered under this Act.

(3) When procuring property and services, a State shall follow the same policies and procedures it uses for procurements from its non-Federal funds, provided that the State's procurement procedures also comply with the minimum requirements of this section.

(4) Each subrecipient shall use its own procurement procedures which reflect applicable State and local laws and regulations, provided that the subrecipient's procurement procedures also comply with the requirements of this section and the standards established by the Governor, pursuant to paragraph (a)(2) of this section.

(5) States and subrecipients shall not use funds provided under JTPA to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State, or local sources, unless it is demonstrated that the JTPA-funded alternative services or facilities would be more effective or more likely to achieve performance goals (sections 107(b) and 141(h)).

(6) Awards are to be made to responsible organizations possessing the demonstrated ability to perform successfully under the terms and conditions of a proposed subgrant or contract. A determination of demonstrated ability shall be done in accordance with the requirements contained in § 627.422 (b) and (d).

(b) *Competition.* (1) Each State and subrecipient shall conduct procurements in a manner which provides full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

(i) Placing unreasonable requirements on firms or organizations in order for them to qualify to do business;

(ii) Requiring unnecessary experience and excessive bonding;

(iii) Noncompetitive pricing practices between firms or organizations or between affiliated companies or organizations;

(iv) Noncompetitive awards to consultants that are on retainer contracts;

(v) Organizational conflicts of interest;

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement;

(vii) Overly restrictive specifications; and

(viii) Any arbitrary action in the procurement process.

(2) Each State and subrecipient shall have written procedures for procurement transactions. These procedures shall ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured (including quantities). Such description shall not, in competitive procurements, contain features which unduly restrict competition; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(3) Each State and subrecipient shall ensure that all prequalified lists of persons, firms, or other organizations which are used in acquiring goods and services are current and include sufficient numbers of qualified sources to ensure maximum open and free competition.

(c) *Conflict of interest.* (1) Each recipient and subrecipient shall maintain a written code of standards of conduct governing the performance of persons engaged in the award and administration of JTPA contracts and subgrants. To the extent permitted by State or local law or regulation, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the awarding agency's officers, employees, or agents, or by awardees or their agents.

(2) *Staff conflict of interest.* Each recipient and subrecipient shall ensure that no individual in a decisionmaking capacity shall engage in any activity, including participation in the selection, award, or administration of a subgrant or contract supported by JTPA funds if a conflict of interest, real or apparent, would be involved.

(3) *PIC conflict of interest.* (i) A PIC member shall not cast a vote, nor participate in any decisionmaking capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member.

(ii) Neither membership on the PIC nor the receipt of JTPA funds to provide training and related services shall be construed, by itself, to violate provisions of section 141(f) of the Act or § 627.420.

(4) A conflict of interest under paragraphs (c) (2) and (3) of this section would arise when:

(i) The individual,

(ii) Any member of the individual's immediate family,

(iii) The individual's partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm or organization selected for award.

(5) The officers, employees, or agents of the agency and PIC members making the award will neither solicit nor accept gratuities, favors, or anything of monetary value from awardees, potential awardees, or parties to subagreements. States and subrecipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

(d) *Methods of procurement.* (1) Each State and subrecipient shall use one of the following methods of procurement, as appropriate for each procurement action:

(i) *Small purchase procedures*—simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. Recipients and subrecipients shall not break down one purchase into several purchases merely to be able to use small purchase procedures. The Governor shall establish standards for small purchase procedures to ensure that price or rate quotations will be documented from an adequate number of qualified sources.

(ii) *Sealed bids (formal advertising)*—bids are publicly solicited procurements for which a firm-fixed-price award (lump sum or unit price) or other fixed-price arrangement is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The Governor shall establish standards for sealed bids which include requirements that invitations for bids be publicly advertised, and that bids be solicited from an adequate number of organizations.

(iii) *Competitive proposals*—normally conducted with more than one source submitting an offer and either a fixed-price or cost-reimbursement type award is made. The Governor shall establish standards for competitive proposals which include requirements for the establishment of a documented methodology for technical evaluations and award to the responsible offeror whose proposals are most advantageous to the program with price, technical, and other factors considered.

(iv) *Noncompetitive proposals (sole source)*—procurement through solicitation of a proposal from only one source, the funding of an unsolicited

proposal, or when, after solicitation of a number of sources, competition is determined inadequate. Each State and subrecipient shall minimize the use of sole source procurements to the extent practicable, but in every case the use of sole source procurements shall be justified and documented. On-the-job training (OJT) awards (except OJT brokering awards, which shall be selected competitively) and the enrollment of individual participants in classroom training may be sole sourced. For all other awards, procurement by noncompetitive proposals may be used only when the award is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

(A) The item or service is available only from a single source;

(B) The public exigency or emergency need for the item or service does not permit a delay resulting from competitive solicitation;

(C) For SDAs, SSGs and subrecipients, the awarding agency authorizes noncompetitive proposals; for States, the noncompetitive proposal is approved through the State's normal sole source approval process;

(D) After solicitation of a number of sources, competition is determined inadequate;

(2) *Pass Throughs*—The procurement rules do not apply to pass throughs of monies from any unit of State or local government (or SDA or SSG administrative entities) to other such units, such as a local educational agency or public housing authority. To qualify as a pass through, the receiving entity must either further pass through the monies to another such entity or procure services in accordance with the procurement rules.

(e) *Cost or price analysis.* (1) Each recipient, in accordance with the minimum requirements established in this section, shall establish standards on the performance of cost or price analysis.

(2) Each recipient and subrecipient shall perform a cost or price analysis in connection with every procurement action, including modifications (except for modifications where a determination has been made that they do not have a monetary impact). The method and degree of analysis depends on the facts surrounding the particular procurement and pricing situation. At a minimum, the awarding agency shall make independent estimates before receiving bids or proposals. A cost analysis is necessary when the offeror is required to submit the elements of the estimated cost (*e.g.*, as in the case of subrecipient relationships), when adequate price competition is lacking, and for sole source procurements, including modifications or change orders. A price analysis shall be used when price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation (including situations involving inadequate price competition and sole source procurements where a price analysis may be used in lieu of a cost analysis). When a cost analysis is necessary and there is inadequate price competition, the offeror shall certify that to the best of its knowledge and belief, the cost data are accurate, complete, and current at the time of agreement on price. Awards or modifications negotiated in reliance on such data should provide the awarding agency a right to a price adjustment to exclude any significant sum by which the price was increased because the awardee had knowingly submitted data that were not accurate, complete, or current as certified.

(3) JTPA procurements shall not permit excess program income (for nonprofit and governmental entities) or excess profit (for private for-profit entities). If profit or program income is included in the price, the awarding agency shall negotiate profit or program income as a separate element of the price for each procurement in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit or program income, consideration shall be given to:

(i) The complexity of the work to be performed;

(ii) The risk borne by the awardee;

(iii) The offeror's investment;

(iv) The amount of subcontracting/ subgranting;

(v) The quality of the offeror's record of past performance;

(vi) Industry profit rates in the surrounding geographical area for similar work; and

(vii) Market conditions in the surrounding geographical area.

(4) Each recipient and subrecipient may charge to the agreement only those costs which are consistent with the allowable cost provisions of § 627.435 of this part, including the guidelines issued by the Governor, as required at § 627.435(i) of this part.

(5) The cost plus a percentage of cost method shall not be used.

(f) *Oversight.* (1) Each recipient and subrecipient shall conduct and document oversight to ensure compliance with the procurement standards, in accordance with the requirements of § 627.475 of this part, Oversight and monitoring.

(2) Each recipient and subrecipient shall maintain an administration system which ensures that vendors and subrecipients perform in accordance with the terms, conditions, and specifications of their awards.

(g) *Transactions between units of government.* (1) Except as provided in paragraph (g)(2) of this section, procurement transactions between units of State or local governments, or any other entities organized principally as the administrative entity for service delivery areas or substate areas, shall be conducted on a cost reimbursable basis. Cost plus type awards are not allowable.

(2) In the case of procurement transactions with schools that are a part of these entities, such as State universities and secondary schools, when tuition charges or entrance fees are not more than the educational institution's catalogue price, necessary to receive specific training, charged to the general public to receive the same training, and for training of participants, the tuition and/ or entrance fee does not have to be broken out by items of cost.

(h) *Award provisions.* Each recipient and subrecipient agreement shall:

(1) Clearly specify deliverables and the basis for payment; and

(2) In the case of awards to subrecipients, contain clauses that provide for:

(i) Compliance with the JTPA regulations;

(ii) Assurance of nondiscrimination and equal opportunity as found in 29 CFR 34.20, Assurance required; duration of obligation; covenants.

(3) In the case of awards to vendors, contain clauses that provide for:

(i) Access by the recipient, the subrecipient, the Department of Labor, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records (including computer records) of the contractor or subcontractor which are directly pertinent to charges to the program, in order to conduct audits and examinations and to make excerpts, transcripts, and photocopies; this right also includes timely and reasonable access to contractor's and subcontractor's personnel for the purpose of interviews and discussions related to such documents;

(4) In the case of awards to both subrecipients and vendors, contain clauses that provide for:

(i) Administrative, contractual, or legal remedies in instances where contractors/subgrantees violate or breach agreement terms, which shall

provide for such sanctions and penalties as may be appropriate;

(ii) Notice of 29 CFR 97.34 requirements pertaining to copyrights (agreements which involve the use of copyrighted materials or the development of copyrightable materials);

(iii) Notice of requirements pertaining to rights to data. Specifically, the awarding agency and the Department of Labor shall have unlimited rights to any data first produced or delivered under the agreement (agreements which involve the use/development of computer programs/ applications, or the maintenance of databases or other computer data processing program, including the inputing of data);

(iv) Termination for cause and for convenience by the awarding agency, including the manner by which the termination will be effected and the basis for settlement;

(v) Notice of awarding agency requirements and regulations pertaining to reporting;

(vi) Audit rights and requirements;

(vii) Payment conditions and delivery terms;

(viii) Process and authority for agreement changes; and

(ix) Provision against assignment;

(5) The Governor may establish additional clauses, as deemed appropriate, for State and subrecipient procurements.

(i) *Disputes.* (1) The Governor shall ensure that the recipient and each subrecipient have protest procedures to handle and resolve disputes relating to their procurements. A protester shall exhaust all administrative remedies with the subrecipient before pursuing a protest at a higher level.

(2) Violations of law will be handled in accordance with the requirements contained in § 627.500(c).

(j) Each recipient and subrecipient shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of agreement type, awardee selection or rejection, and the basis for the agreement price.

§ 627.422 Selection of service providers.

(a) Service providers selected under titles I, II, and III of the Act shall be selected in accordance with the provisions of section 107 of the Act, except that section 107(d) shall not apply to training under title III.

(b) Consistent with the requirements of this section, the Governor shall establish standards to be followed by recipients and subrecipients in making determinations of demonstrated performance, prior to the award of all agreements under titles I, II, and III of the Act. These standards shall comply with the requirements of this section, § 627.420, of this part, Procurement, and section 164(a)(3) of the Act. The standards shall require that determinations of demonstrated performance will be in writing, and completed prior to the award of an agreement.

(c) Each recipient and subrecipient, to the extent practicable, shall select service providers on a competitive basis, in accordance with the standards established in § 627.420(b) of this part, Procurement. When a State, SDA, SSG, or administrative entity determines that services other than intake and eligibility determination will be provided by its own staff, a determination shall be made of the demonstrated performance of the entity to provide the services. This determination: Shall be in writing; shall take into consideration the matters listed in paragraph (d) of this section; and may, if appropriate, be documented and described in the Job Training Plan, GCSSP, or EDWAA plan.

(d) Awards are to be made to organizations possessing the demonstrated ability to perform successfully under the terms and conditions of a proposed subgrant or contract. Where comparable proposals have been received from an offeror which has demonstrated performance and a high-risk recipient/subrecipient, and a determination has been made that both proposals are fundable, the award should be made to the offeror which has demonstrated performance, unless other factors dictate a contrary result. Determinations of demonstrated performance shall be in writing, and take into consideration such matters as whether the organization has:

(1) Adequate financial resources or the ability to obtain them;

(2) The ability to meet the program design specifications at a reasonable cost, as well as the ability to meet performance goals;

(3) A satisfactory record of past performance (in job training, basic skills training, or related activities), including demonstrated quality of training; reasonable drop-out rates from past programs; where applicable, the ability to provide or arrange for appropriate supportive services as specified in the ISS, including child care; retention in employment; and earning rates of participants;

(4) For title II programs, the ability to provide services that can lead to the achievement of competency standards for participants with identified deficiencies;

(5) A satisfactory record of integrity, business ethics, and fiscal accountability;

(6) The necessary organization, experience, accounting and operational controls; and

(7) The technical skills to perform the work.

(e) In selecting service providers to deliver services in a service delivery area/substate area, proper consideration shall be given to community-based organizations (section 107(a)). These community-based organizations, including women's organizations with knowledge about or experience in nontraditional training for women, shall be organizations which are recognized in the community in which they are to provide services. Where proposals are evenly rated, and one of these proposals has been submitted by a CBO, the tie breaker may go to the CBO.

(f) Appropriate education agencies in the service delivery area/substate area shall be provided the opportunity to provide educational services, unless the administrative entity demonstrates that alternative agency(ies) or organization(s) would be more effective or would have greater potential to enhance the participants' continued educational and career growth (section 107(c)). Where proposals are evenly rated, and one of these proposals has been submitted by an educational institution, the tie breaker shall go to the educational institution.

(g) In determining demonstrated performance of institutions/ organizations which provide training, such performance measures as retention in training, training completion, job placement, and rates of licensure shall be taken into consideration.

(h) Service providers under agreements to conduct projects under section 123(a)(2) shall be selected in accordance with the requirements of this section.

(i) The requirements of section 204(d)(2)(B) shall be followed in entering into agreements to provide services for older individuals funded under title II, part A.

(j) Additional requirements for selection of service providers by substate grantees are described at section 313(b)(6) of the Act and § 631.52 of this chapter.

(k) Amounts for service providers. Each SDA/SSG shall ensure that, for all services provided to participants through contracts, grants, or other agreements with a service provider, such contract, grant, or agreement shall include appropriate amounts necessary

for administration and supportive services (section 108(b)(5)).

(l) When a State, SDA or SSG has a policy of awarding additional points to proposals received from such organizations as minority business enterprises and women-owned businesses, and this policy is generally applicable to its other funds, the State, SDA or SSG may apply this policy to the JTPA funds.

§ 627.423 Funding restrictions for "high-risk" recipients and subrecipients.

(a) A recipient or subrecipient may be considered "high-risk" if an awarding agency determines that the recipient or subrecipient is otherwise responsible, but:

(1) Has a history of unsatisfactory performance;

(2) Is not financially stable;

(3) Has a management system which does not meet the management standards set forth in this part; or

(4) Has not conformed to terms and conditions of a previously awarded grant or subgrant.

(b) If the awarding agency determines that an award will be made to a "high-risk" recipient or subrecipient, then special funding restrictions that address the "high-risk" status may be included in the award. Funding restrictions may include, but are not limited to:

(1) Payment on a reimbursement basis;

(2) Requiring additional and/or more detailed financial or performance reports;

(3) Additional monitoring;

(4) Requiring the recipient or subrecipient to obtain specific technical or management assistance; and/or

(5) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such funding restrictions, the awarding official will notify the recipient or subrecipient as early as possible, in writing, of:

(1) The nature of the funding restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the restrictions imposed.

§ 627.424 Prohibition of subawards to debarred and suspended parties.

(a) No recipient or subrecipient shall make any awards or permit any awards at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs in accordance with the Department of Labor regulations at 29 CFR part 98.

(b) Recipients and subrecipients shall comply with the applicable requirements of the Department of Labor regulations at 29 CFR part 98.

§ 627.425 Standards for financial management and participant data systems.

(a)(1) *General.* The financial management system and the participant data system of each recipient and subrecipient shall provide federally required records and reports that are uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring, reporting, audit, program management, and evaluation purposes (sections 165(a)(1) and (2), and 182).

(2) An awarding agency may review the adequacy of the financial management system and participant data system of any recipient/subrecipient as part of a preaward review or at any time subsequent to award.

(b) *Financial systems.* Recipients and subrecipients shall ensure that their own financial systems as well as those of their subrecipients provide fiscal control and accounting procedures that are:

(1) In accordance with generally accepted accounting principles applicable in each State including:

(i) Information pertaining to subgrant and contract awards, obligations, unobligated balances, assets, liabilities, expenditures, and income;

(ii) Effective internal controls to safeguard assets and assure their proper use;

(iii) A comparison of actual expenditures with budgeted amounts for each subgrant and contract;

(iv) Source documentation to support accounting records; and

(v) Proper charging of costs and cost allocation; and

(2) Sufficient to:

(i) Permit preparation of required reports;

(ii) Permit the tracing of funds to a level of expenditure adequate to establish that funds have not been used in violation of the applicable restrictions on the use of such funds;

(iii) As required by section 165(g), permit the tracing of program income, potential stand-in costs and other funds that are allowable except for funding limitations, as defined in § 627.480(f) of this part, Audits; and

(iv) Demonstrate compliance with the matching requirement of section 123(b)(2).

(c) *Applicant and participant data systems.* Each recipient and subrecipient shall ensure that records are maintained:

(1) Of each applicant for whom an application has been completed and a formal determination of eligibility or ineligibility made;

(2) Of each participant's enrollment in a JTPA-funded program in sufficient detail to demonstrate compliance with the relevant eligibility criteria attending a particular activity and with the restrictions on the provision and duration of services and specific activities imposed by the Act; and

(3) Of such participant information as may be necessary to develop and measure the achievement of performance standards established by the Secretary.

§ 627.430 Grant payments.

(a) Except as provided in paragraph (h)(2) of this section, JTPA grant payments shall be made to the Governor in accordance with the Cash Management Improvement Act of 1990 (31 U.S.C. 6501, et seq.), Department of Treasury regulations at 31 CFR part 205, and the State Agreement entered into with the Department of the Treasury.

(b) *Basic standard.* Except as provided in paragraphs (d) and (e) of this section, each recipient and subrecipient shall be paid in advance, provided it demonstrates the willingness and ability to limit advanced funds to the actual immediate disbursement needs in carrying out the JTPA program.

(c) *Advance payments.* To the maximum extent feasible, each subrecipient shall be provided advance payments via electronic funds transfer, following the procedures of the awarding agency.

(d) *Reimbursement.* (1) Reimbursement is the preferred method when the requirements in paragraph (b) of this section are not met.

(i) Each recipient shall submit requests for reimbursement in accordance with the provisions at 31 CFR part 205.

(ii) Each subrecipient shall submit requests for reimbursement in accordance with requirements established by the awarding agency.

(2) Each subrecipient shall be paid as promptly as possible after receipt of a proper request for reimbursement.

(e) *Working capital advance payments.* If a subrecipient cannot meet the criteria for advance payments described in paragraph (b) of this section, and the awarding agency has determined that reimbursement is not feasible because the subrecipient lacks sufficient working capital, the awarding

agency may provide cash on a working capital advance payment basis. Under this procedure, the awarding agency shall advance cash to the subrecipient to cover its estimated disbursement needs for an initial period, generally geared to the subrecipient's disbursing cycle. In no event may such an advance exceed 20 percent of the award amount. Thereafter, the awarding agency shall reimburse the subrecipient for its actual cash disbursements. The working capital advance method of payment shall not be used by recipients or subrecipients if the reason for using such method is the unwillingness or inability of the recipient or subrecipient to provide timely advances to the subrecipient to meet the subrecipient's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* Each recipient and subrecipient shall disburse cash received as a result of program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(g) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, each recipient and subrecipient is encouraged to use minority-owned banks (a bank which is at least 50 percent owned by minority group members). Additional information may be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A recipient or subrecipient shall not be required to maintain a separate bank account but shall separately account for Federal funds on deposit.

(h) *Interest earned on advances.* (1) An interest liability shall accrue on advance payments between Federal agencies and State governments, as provided by the Cash Management Improvement Act (31 U.S.C. 6501, et seq.) and implementing regulations at 31 CFR part 205.

(2) Each recipient and subrecipient shall account for interest earned on advances of Federal funds as program income, as provided at § 627.450 of this part, Program income.

§ 627.435 Cost principles and allowable costs.

(a) *General.* To be allowable, a cost shall be necessary and reasonable for the proper and efficient administration of the program, be allocable to the program, and, except as provided herein, not be a general expense required to carry out the overall responsibilities of the Governor or a governmental subrecipient. Costs charged to the program shall be accorded consistent treatment through application of generally accepted accounting principles appropriate to the JTPA program, as determined by the Governor.

(b) Whether a cost is charged as a direct cost or as an indirect cost shall be determined in accordance with the descriptions of direct and indirect costs contained in the OMB Circulars identified in DOL's regulations at 29 CFR 97.22(b).

(c) Costs allocable to another Federal grant, JTPA program, or cost category may not be shifted to a JTPA grant, subgrant, program, or cost category to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

(d) Applicable credits such as rebates, discounts, refunds, and overpayment adjustments, as well as interest earned on any of them, shall be credited as a reduction of costs if received during the same funding period that the cost was initially charged. Credits received after the funding period shall be returned to the Department as provided for at § 627.490(b).

(e) The following costs are not allowable charges to the JTPA program:

(1) Costs of fines and penalties resulting from violations of, or failure to comply with, Federal, State, or local laws and regulations;

(2) Back pay, unless it represents additional pay for JTPA services performed for which the individual was underpaid;

(3) Entertainment costs;

(4) Bad debts expense;

(5) Insurance policies offering protection against debts established by the Federal Government;

(6) Contributions to a contingency reserve or any similar provision for unforeseen events;

(7) Costs prohibited by 29 CFR part 93 (Lobbying Restrictions) or costs of any salaries or expenses related to any activity designed to influence legislation or appropriations pending before the Congress of the United States; and

(8) Costs of activities prohibited in § 627.205, Public service employment prohibition; § 627.210, Nondiscrimination and nonsectarian activities; § 627.215, Relocation; § 627.225, Employment generating activities; and § 627.230, Displacement, of this part.

(f)(1) The cost of legal expenses required in the administration of grant programs is allowable. Legal expenses include the expenses incurred by the JTPA system in the establishment and maintenance of a grievance system, including the costs of hearings and appeals, and related expenses such as lawyers' fees. Legal expenses does not include costs resulting from, and after, the grievance process such as fines and penalties, which are not allowable, and settlement costs, which are allowable to the extent that such costs included in the settlement would have been allowable if charged to the JTPA program at the time they were incurred.

(2) Legal services furnished by the chief legal officer of a State or local government or staff solely for the purpose of discharging general responsibilities as a legal officer are unallowable.

(3) Legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge, are unallowable.

(g) Costs of travel and incidental expenses incurred by volunteers are allowable provided such costs are incurred for activities that are generally consistent with section 204(c)(6) of the Act.

(h) Contributions to a reserve for a self-insurance program, to the extent that the type and extent of coverage and the rates and premiums would have been allowed had insurance been purchased to cover the risks, are allowable.

(i) The Governor shall prescribe and implement guidelines on allowable costs for SDA, SSG, and statewide programs that are consistent with the cost principles and allowable costs provisions of paragraphs (a) through (h) of this section and that include, at a minimum, provisions that specify the extent to which the following cost items are allowable or unallowable JTPA costs and, if allowable, guidelines on conditions or the extent of allowability, documentation requirements, and any prior approval requirements applicable to such cost items:

(1) Compensation for personal services of staff, including wages, salaries, supplementary compensation, and fringe benefits;

(2) Costs incurred by the SJTCC, HRIC, PIC's, and other advisory councils or committees;

(3) Advertising costs;

(4) Depreciation and/or use allowances;

(5) Printing and reproduction costs;

(6) Interest expense;

(7) Expenditures for transportation and travel;

(8) Payments to OJT employers, training institutions, and other vendors;

(9) Fees or profits;

(10) Insurance costs, including insurance coverage for injuries suffered

by participants who are not covered by existing workers' compensation, and personal liability insurance for PIC members;

(11) Acquisitions of capital assets;

(12) Building space costs, including rent, repairs, and alterations;

(13) Pre-agreement costs;

(14) Fund-raising activities;

(15) Professional services, including organizational management studies conducted by outside individuals or firms; and

(16) Taxes.

§ 627.440 Classification of costs.

(a) Allowable costs for programs under title II and title III shall be charged (allocated) to a particular cost objective/category to the extent that benefits are received by such cost objective/category. Joint and similar types of costs may be charged initially to a cost pool used for the accumulation of such costs pending distribution in due course to the ultimate benefitting cost objective/category. The classification of costs for programs under title III of the Act are set forth at § 631.13 of this chapter, Classification of costs at State and substate levels.

(b) For State-administered programs under Title II, the State is required to plan, control, and charge expenditures against the following cost objectives/categories:

(1) Titles II–A and II–C (combined)—capacity building and technical assistance (sections 202(c)(1)(B) and 262(c)(1)(B) of the Act to carry out activities pursuant to sections 202(c)(3)(A) and 262(c)(3)(A) of the Act);

(2) Titles II–A and II–C (combined)—8 percent coordination (sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(A) of the Act);

(3) Titles II–A and II–C (combined)—8 percent services/direct training (sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(B) of the Act);

(4) Titles II–A and II–C (combined)—8 percent services/training-related and supportive services (sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(B) of the Act);

(5) Titles II–A and II–C (combined)—8 percent services/administration (sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(B) of the Act);

(6) Titles II–A and II–C (combined)—8 percent services to disadvantaged (section 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(C) of the Act);

(7) Title II–A—older individuals/direct training (section 202(c)(1)(D) of the Act to carry out activities pursuant to section 204(d) of the Act);

(8) Title II–A—older individuals/training-related and supportive services (section 202(c)(1)(D) of the Act to carry out activities pursuant to section 204(d) of the Act);

(9) Title II–A—older individuals/administration (section 202(c)(1)(D) of the Act to carry out activities pursuant to section 204(d) of the Act); and

(10) Title II—administration (sections 202(c)(1)(A) and 262(c)(1)(A) of the Act to carry out activities pursuant to Title II of the Act, including Title II–B).

(c)(1) SDA grant recipients and their subrecipients shall plan, control, and charge expenditures, excluding incentive funds received pursuant to sections 202(c)(1)(B) and 262(c)(1)(B) of the Act, against the following cost objectives/categories:

(i) Title II–A—direct training services;

(ii) Title II–C—direct training services;

(iii) Title II–A—training-related and supportive services;

(iv) Title II–C—training-related and supportive services;

(v) Title II–B—training and supportive services;

(vi) Title II–A—administration;

(vii) Title II–B—administration; and

(viii) Title II–C—administration.

(2) Incentive funds received pursuant to sections 202(c)(1)(B) and 262(c)(1)(B) of the Act, may be combined and accounted for in total, without regard to cost categories or cost limitations.

(d) States and subrecipients shall use the following definitions in assigning costs to the cost categories contained in paragraphs (b) and (c) of this section:

(1) *Direct training services—title II–A.* Costs for direct training services that may be charged to the title II–A program are:

(i) The personnel and non-personnel costs directly related to providing those services to participants specified in section 204(b)(1) of the Act and which can be specifically identified with one or more of those services. Generally, such costs are limited to:

(A) Salaries, fringe benefits, equipment, supplies, space, staff training, transportation, and other related costs of personnel directly engaged in providing training; and

(B) Salaries, fringe benefits, and related non-personnel costs of program component supervisors and/or coordinators as well as clerical staff, provided such staff work exclusively on activities or functions specified in section 204(b)(1) of the Act or allocations of such costs are made based on actual time worked or other equitable cost allocation methods;

(ii) Books, instructional materials, and other teaching aids used by or for participants;

(iii) Equipment and materials used in providing training to participants;

(iv) Classroom space and utility costs;

(v) Costs of insurance coverage of participants as specified at § 627.315(b) of this part, Benefits and Working Conditions;

(vi) Payments to vendors for goods or services procured for the use or benefit of program participants for direct training services, including:

(A) Payments for commercially available training packages purchased competitively pursuant to section 141(d)(3) of the Act;

(B) Tuition charges, entrance fees, and other usual and customary fees of an educational institution when such tuition charges, entrance fees, or other fees are not more than the educational institution's catalogue price, necessary to receive specific training, charged to the general public to receive the same training, and are for training of participants; and

(C) Payments to OJT employers, but not brokering contractors. Costs incurred under brokering arrangements shall be allocated to all of the benefitting cost categories, and

(vii) Payments to JTPA participants that represent hours spent in a direct training activity (e.g., wages, work-based training payments, training payments for combined activities), including work experience, vocational exploration, limited internships, and entry employment.

(2) *Direct training services—title II–C.* Costs for direct training services that may be charged to the title II–C program are the costs identified in paragraph (d)(1) of this section as well as costs directly related to providing those services to participants specified in section 264(c)(1) of the Act and which can be specifically identified with one or more of those services.

(3) *Training-related and supportive services—title II–A.* Costs for training-related and supportive services that may be charged to the title II–A program are:

(i) The personnel and non-personnel costs directly related to providing outreach, intake, and eligibility determination, as well as those services to participants specified in section 204(b)(2) of the Act, and which can be specifically identified with one or more of those services. Generally, such costs are limited to:

(A) Salaries, fringe benefits, equipment, supplies, space, staff training, transportation, and other related costs of personnel directly

engaged in providing training-related and/or supportive services; and

(B) Salaries, fringe benefits, and related non-personnel costs of program component supervisors and/or coordinators as well as clerical staff, provided such staff work exclusively on activities or functions specified in section 204(b)(2) of the Act or allocations of such costs are made based on actual time worked or another equitable allocation method.

(ii) Needs-based payments, cash incentives and bonuses, other financial assistance and supportive services to participants and applicants, where applicable.

(4) *Training-related and supportive services—title II–C.* Costs for training-related and supportive services that may be charged to the title II–C program are the costs identified in paragraph (d)(3) of this section, as well as costs directly related to providing those services to participants specified in section 264(c)(2) of the Act and which can be specifically identified with one or more of those services.

(5) *Administration.* The costs of administration are those portions of necessary and allowable costs associated with the overall management and administration of the JTPA program and which are not directly related to the provision of services to participants or otherwise allocable to the program cost objectives/categories in paragraphs (b)(1)–(8) or (c)(1) (i)–(v) of this section. These costs can be both personnel and non-personnel and both direct and indirect. Costs of administration shall include:

(i) Except as provided in paragraph (e)(1) of this section, costs of salaries, wages, and related costs of the recipient's or subrecipient's staff or PIC staff engaged in:

(A) Overall program management, program coordination, and general administrative functions, including the salaries and related costs of the executive director, JTPA director, project director, personnel officer, fiscal officer/bookkeeper, purchasing officer, secretary, payroll/insurance/property clerk and other costs associated with carrying out administrative functions;

(B) Preparing program plans, budgets, schedules, and amendments thereto;

(C) Monitoring of programs, projects, subrecipients, and related systems and processes;

(D) Procurement activities, including the award of specific subgrants, contracts, and purchase orders;

(E) Providing State or local officials and the general public with information about the program (public relations);

(F) Developing systems and procedures, including management information systems, for assuring compliance with program requirements;

(G) Preparing reports and other documents related to the program requirements;

(H) Coordinating the resolution of audit findings;

(I) Evaluating program results against stated objectives; and

(J) Performing such administrative services as general legal services, accounting services, audit services; and managing purchasing, property, payroll, and personnel;

(ii) Costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(iii) The costs of organization-wide management functions; and

(iv) Travel costs incurred for official business in carrying out program management or administrative activities, including travel costs incurred by PIC members.

(e) *Other cost classification guidance.* (1) Personnel and related non-personnel costs of the recipient's or subrecipient's staff, including project directors, who perform services or activities that benefit two or more of the cost objectives/categories identified in this section may be allocated to the benefitting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(2) Indirect or overhead costs normally shall be charged to administration, except that specific costs charged to an overhead or indirect cost pool that can be identified directly with a JTPA cost objective/category other than administration may be charged to the JTPA cost objective/category directly benefitted. Documentation of such charges shall be maintained.

(3) Where an award to a subrecipient is for a "commercially available off-the-shelf training package," as defined at § 626.5 of this chapter, the subrecipient may charge all costs of such package to the direct training services cost category.

(4) Profits, fees, and other revenues earned by a subrecipient that are in excess of actual costs incurred, to the extent allowable and consistent with the guidelines on allowable costs prescribed by the Governor in accordance with § 627.435(i). Cost principles and allowable costs, may be allocated to all three cost categories based on the proportionate share of actual costs incurred attributable to each category.

§ 627.445 Limitations on certain costs.

(a) *State-administered programs.*—(1) *Services for older individuals.* Of the funds allocated for any program year for section 202(c)(1)(D) of the Act to carry out activities pursuant to section 204(d) of the Act—

(i) Not less than 50 percent shall be expended for the cost of direct training services; and

(ii) Not more than 20 percent shall be expended for the cost of administration.

(2) *State education services.* Of the funds allocated for any program year for sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to carry out activities pursuant to section 123(d)(2)(B) of the Act—

(i) Not less than 50 percent shall be expended for the cost of direct training services; and

(ii) Not more than 20 percent shall be expended for the cost of administration.

(3) The limitations specified in paragraph (a)(2) of this section shall apply to the combined total of funds allocated for sections 202(c)(1)(C) and 262(c)(1)(C) of the Act.

(b) *SDA allocations.* (1) In applying the title II–A and II–C cost limitations specified in section 108(b)(4) of the Act, the funds allocated to a service delivery area shall be net of any:

(i) Transfers made in accordance with sections 206, 256, and 266 of the Act; and

(ii) Reallocations made by the Governor in accordance with section 109(a) of the Act.

(2) The limitations specified in paragraph (b)(1) of this section shall apply separately to the funds allocated for title II–A and title II–C programs.

(3) The title II–B administrative cost limitation of 15 percent shall be 15 percent of the funds allocated for any program year to a service delivery area, excluding any funds transferred to title II–C in accordance with section 256 of the Act (section 253(a)(3)).

(c)(1) The State shall establish a system to regularly assess compliance with the cost limitations including periodic review and corrective action, as necessary.

(2) States and service delivery areas shall have the 3-year period of fund availability to comply with the cost limitations in section 108 of the Act and paragraphs (a) and (b) of this section (section 161(b)).

(d) Administrative costs incurred by a community-based organization or non-profit service provider shall not be included in the limitation described in section 108(b)(4)(A) of the Act if:

(1) Such costs are incurred under an agreement that meets the requirements

of section 141(d)(3)(C) (i) and (ii) of the Act;

(2) The total administrative expenditures of the service delivery area, including the administrative expenditures of such community-based organizations or non-profit service providers, do not exceed 25 percent of the funds allocated to the service delivery area for the program year of allocation; and

(3) The total direct training expenditures of the service delivery area, including the direct training expenditures of such community-based organizations or non-profit service providers, is equal to or exceeds 50 percent of the funds allocated to the service delivery area for the program year less one-half of the percentage by which the total administrative expenditures of the service delivery area exceeds 20 percent. For example, if the total administrative expenditures of the service delivery area is 24 percent, then the total direct training expenditures of the service delivery area must be at least 48 percent.

(e) The provisions of this section do not apply to any title III programs.

(f) The provisions of this section do not apply to any designated SDA which served as a concentrated employment program grantee for a rural area under the Comprehensive Employment and Training Act (section 108(d)).

§ 627.450 Program income.

(a) *Definition of program income.* (1) Program income means income received by the recipient or subrecipient that is directly generated by a grant or subgrant supported activity, or earned only as a result of the grant or subgrant. Program income includes:

(i) Income from fees for services performed and from conferences;

(ii) Income from the use or rental of real or personal property acquired with grant or subgrant funds;

(iii) Income from the sale of commodities or items fabricated under a grant or subgrant;

(iv) Revenues earned by a governmental or non-profit service provider under either a fixed-price or reimbursable award that are in excess of the actual costs incurred in providing the services; and

(v) Interest income earned on advances of JTPA funds.

(2) Program income does not include:

(i) Rebates, credits, discounts, refunds, etc., or interest earned on any of them, which shall be credited in accordance with § 627.435(d), Cost principles and allowable costs;

(ii) Taxes, special assessments, levies, fines, and other such governmental revenues raised by a recipient or subrecipient; or

(iii) Income from royalties and license fees for copyrighted material, patents, patent applications, trademarks, and inventions developed by a recipient or subrecipient.

(3) *Property.* Proceeds from the sale of property shall be handled in accordance with the requirements of § 627.465 of this part, Property management standards.

(b) *Cost of generating program income.* Costs incidental to the generation of program income may be deducted, if not already charged to the grant, from gross income to determine program income.

(c) *Use of program income.* (1)(i) A recipient or subrecipient may retain any program income earned by the recipient or subrecipient only if such income is added to the funds committed to the particular JTPA grant or subgrant and title under which it was earned and such income is used for that title's purposes and under the terms and conditions applicable to the use of the grant funds.

(ii) A State may use interest it earns on JTPA funds, deposited by the United States to the State's account, to satisfy the requirement at 31 U.S.C. 6503(c) that the State pay interest on such deposits.

(iii) The classification of costs in §§ 627.440 and 631.13 shall apply to the use of program income.

(iv) The administrative cost limitation in §§ 627.445 and 631.14 shall apply to the use of program income, except that program income used in accordance with paragraph (c)(1)(ii) of this section shall be exempt from the administrative cost limitations.

(2) Program income generated under title II may also be used to satisfy the matching requirement of section 123(b) of the Act.

(3) Program income shall be used prior to the submission of the final report for the funding period of the program year of funds to which the earnings are attributable.

(4) If the subrecipient that earned program income cannot use such income for JTPA purposes, the recipient may permit another entity to use the program income for JTPA purposes.

(5) Program income not used in accordance with the requirements of this section shall be remitted to the Department of Labor.

(d) *Program and other income after the funding period.* Rental income and user fees on real and personal property acquired with JTPA funds shall continue to be JTPA program income in subsequent funding periods. There are no Federal requirements governing the disposition of all other income that is earned after the end of the funding period.

§ 627.455 Reports required.

(a) *General.* The Governor shall report to DOL pursuant to instructions issued by DOL. Reports shall be submitted no more frequently than quarterly, in accordance with section 165(f) of the Act, and within 45 calendar days after the end of the report period. Additional reporting requirements for title III are set forth at § 631.15 of this chapter.

(b) A recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients, however, the recipient is required to meet the reporting requirements imposed on it by DOL.

(c) DOL may provide computer outputs to recipients to expedite or contribute to the accuracy of reporting. DOL may accept the required information from recipients in electronically reported format or computer printouts instead of prescribed forms.

(d) *Financial reports.* (1) Financial reports for programs under titles I, II, and III shall be submitted to DOL by each State quarterly and by program year of appropriation.

(2) Each recipient shall report program outlays on an accrual basis. If the recipient's accounting records are not normally kept on the accrual basis, the recipient shall develop such accrual information through an analysis of the documentation on hand.

(3) A final financial report is required 90 days after the expiration of a funding period (see § 627.485 of this part, Closeout).

(4) Pursuant to section 104(b)(13) of the Act, the SDA shall annually report to the Governor. Among other items, this report shall include information on the extent to which the SDA has met the goals for the training and training-related placement of women in nontraditional employment.

§ 627.460 Requirements for records.

(a) Records, including the records identified in section 165(g) of the Act, shall be retained in accordance with section 165(e) of the Act. In establishing the time period of record retention requirements for records of subrecipients, the State may either:

(1) Impose the time limitation requirement of section 165(e) of the Act; or

(2) Require that subrecipient records for each funding period be retained for 3 years after the subrecipient submits to the awarding agency its final

expenditure report for that funding period. Records for nonexpendable property shall be retained for a period of three years after final disposition of the property.

(b) The Governor shall ensure that the records under this section shall be retained beyond the prescribed period if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the Governor shall ensure that the records shall be retained until the litigation, audit, or claim has been finally resolved.

(c) In the event of the termination of the relationship with a subrecipient, the Governor or SDA or title III SSG shall be responsible for the maintenance and retention of the records of any subrecipient unable to retain them.

(d) *Record storage.* Records shall be retained and stored in a manner which will preserve their integrity and admissibility as evidence in any audit or other proceeding. The burden of production and authentication of the records shall be on the custodian of the records.

(e) *Federal and awarding agencies' access to records*—(1) *Records of recipients and subrecipients.* The awarding agency, the Department of Labor (including the Department of Labor's Office of Inspector General), and the Comptroller General of the United States, or any of their authorized representatives, have the right of timely and reasonable access to any books, documents, papers, computer records, or other records of recipients and subrecipients that are pertinent to the grant, in order to conduct audits and examinations, and to make excerpts, transcripts, and photocopies of such documents. This right also includes timely and reasonable access to recipient and subrecipient personnel for the purpose of interview and discussion related to such documents.

(2) *Expiration of right of access.* The right of access in this section is not limited to the required retention period but shall last as long as the records are retained.

§ 627.463 Public access to records.

(a) *Public access.* Except as provided in paragraph (b) of this section, records maintained by recipients or subrecipients pursuant to § 627.460 shall be made available to the public upon request, notwithstanding the provisions of State or local law.

(b) *Exceptions.* This requirement does not apply to:

(1) Information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(2) Trade secrets, or commercial or financial information, obtained from a person and privileged or confidential.

(c) *Fees.* For processing of a request for a record under this section, a fee may be charged to the extent sufficient to recover the cost applicable to processing such request (section 165(a)(4)).

§ 627.465 Property management standards.

(a) *States and governmental subrecipients.* Real property, equipment, supplies, and intangible property acquired or produced after July 1, 1993, by States and governmental subrecipients with JTPA funds shall be governed by the definitions and property requirements in the DOL regulations at 29 CFR part 97, except that prior approval by the Department of Labor to acquire property is waived.

(b) *Nongovernmental subrecipients.* Except as provided in paragraph (c) of this section, real and personal property, including intangible property, acquired or produced after July 1, 1993, by nongovernmental subrecipients with JTPA funds shall be governed by the definitions and property management standards of OMB Circular A–110, as codified by administrative regulations of the Department of Labor in 29 CFR Part 95, except that prior approval by the Department of Labor to acquire property is waived.

(c) *Special provisions for property acquired under subgrants to commercial organizations.*—(1) *Scope.* This paragraph (c) applies to real and personal property other than supplies that are acquired or produced after July 1, 1993, under a JTPA subgrant to a commercial organization.

(2) *Property acquired by commercial subrecipients.* Title to property acquired or produced by a subrecipient that is a commercial organization shall vest in the awarding agency, provided such agency is a governmental entity or nongovernmental organization that is not a commercial organization. Property so acquired or produced shall be considered to be acquired or produced by the awarding agency and paragraph (a) or (b) of this section, as appropriate, shall apply to that property. If the awarding agency is also a commercial organization, title shall vest in the higher level, non-commercial awarding agency that made the subaward to the commercial subrecipient.

(3) *Approval for acquisition.* A subrecipient that is a commercial organization shall not acquire property subject to this section without the prior approval of the awarding agency.

(d) *Notification to the Secretary of real property acquisitions.* Recipients shall notify the Secretary immediately upon acquisition of real property with JTPA funds, including acquisitions by subrecipients. Such notification shall include the location of the real property and the Federal share percentage.

(e) *Property procured before July 1, 1993.* (1) Personal or real property procured with JTPA funds or transferred from programs under the Comprehensive Employment and Training Act must be used for purposes authorized by the Act. Subject to the Secretary's rights to such property, the Governor shall maintain accountability for property in accordance with State procedures and the records retention requirements of § 627.460 of this part.

(2) The JTPA program must be reimbursed the fair market value of any unneeded property retained by the Governor for use in a non-JTPA program. The proceeds from the sale of any property or transfer of property to a non-JTPA program must be used for purposes authorized under the Act.

§ 627.470 Performance standards.

(a) *General.* The Secretary shall prescribe performance standards for adult programs under title II–A, for youth programs under title II–C, for dislocated worker programs under title III, and for older worker programs under section 204(d) of the Act. Any performance standards developed for employment competencies shall be based on such factors as entry level skills and other hiring requirements.

(b) Pursuant to instructions and time lines issued by the Secretary, the Governor shall:

(1) Collect the data necessary to set performance standards pursuant to section 106 of the Act; and

(2) Maintain records and submit reports required by sections 106(j)(3), 165(a)(3), (c)(1), and (d) and 121(b)(6) of the Act.

(c) *Title II performance standards.* (1) The Governor shall establish SDA performance standards for title II within the parameters set by the Secretary pursuant to sections 106(b) and (d) of the Act and apply the standards in accordance with section 202(c)(1)(B) of the Act.

(2) The Governor shall establish incentive award policies pursuant to section 106(b)(7) of the Act, except for programs operated under section 204(d) of the Act. Pursuant to section 106(b)(8) of the Act, Governors may not consider standards relating gross program

expenditures to performance measures in making such incentive awards.

(3) The Governor shall provide technical assistance to SDA's failing to meet performance standards established by the Secretary for a given program year (section 106(j)(2)).

(4)(i) If an SDA fails to meet a prescribed number of the Secretary's performance standards for 2 consecutive years, the Governor shall notify the Secretary and the service delivery area of the continued failure and impose a reorganization plan (section 106(j)(4)).

(ii) The number of standards deemed to constitute failure shall be specified by the Secretary biennially and shall be based on an appropriate proportion of the total number established by the Secretary for that performance cycle. In determining failure, the specified proportion shall be applied separately to each year of the two year cycle.

(iii) A reorganization plan shall not be imposed for a failure to meet performance standards other than those established by the Secretary.

(iv) A reorganization plan shall be considered to be imposed when, at a minimum:

(A) The problem or deficiency is identified,

(B) The problem is communicated to the SDA, and

(C) The SDA is provided an initial statement of the actions or steps required and the timeframe within which they are to be initiated. A final statement of required steps and actions is to be issued within 30 days.

(d)(1) If the Governor does not impose a reorganization plan, required by paragraph (c)(4) of this section, within 90 days of notifying the Grant Officer of an SDA's continued failure to meet performance standards, the Grant Officer shall develop and impose such a plan (section 106(j)(5)).

(2) Before imposing a reorganization plan, the Grant Officer shall notify the Governor and SDA in writing of the intent to impose the plan and provide both parties the opportunity to submit comments within 30 days of receipt of the Grant Officer's notice.

(e) An SDA subject to a reorganization plan under paragraphs (c)(4) or (d) of this section may, within 30 days of receiving notice of such action, appeal to the Secretary to revise or rescind the reorganization plan under the procedures set forth at § 627.471 of this subpart, Reorganization plan appeals (section 106(j)(6)(A)).

(f) *Secretarial action to recapture or withhold funds.* (1) The Grant Officer shall recapture or withhold an amount not to exceed one-fifth of the State administration set-aside allocated under sections 202(c)(1)(A) and 262(c)(1)(A) of the Act when:

(i) The Governor has failed to impose a reorganization plan under paragraph (c)(4) of this section, for the purposes of providing technical assistance under a reorganization plan imposed by the Secretary (section 106(j)(5)(B)); or

(ii) The Secretary determines in an appeal provided for at paragraph (e) of this section, and set forth at § 627.471 of this subpart, that the Governor has not provided appropriate technical assistance as required at section 106(j)(2) (section 106(j)(6)(B)).

(2)(i) A Governor of a State that is subject to recapture or withholding under paragraph (f)(1) of this section may, within 30 days of receipt of such notice, appeal such recapture or withholding to the Secretary.

(ii) The Secretary may consider any comments submitted by the Governor and shall make a decision within 45 days after the appeal is received.

(g) *Title III performance standards.* (1) The Governor shall establish SSG performance standards for programs under title III within the parameters set annually by the Secretary pursuant to section 106(c) and (d) of the Act.

(2) Any performance standard for programs under title III shall make appropriate allowances for the difference in cost resulting from serving workers receiving needs-related payments authorized under § 631.20 of this chapter (section 106(c)(2)).

(3) The Secretary annually shall certify compliance, if the program is in compliance, with the title III performance standards established pursuant to paragraph (a) of section 322(a)(4) of the Act.

(4) The Governor shall not establish standards for the operation of programs under title III that are inconsistent with the performance standards established by the Secretary under provisions of section 106(c) of the Act (section 311(b)(8)).

(5) When an SSG fails to meet performance standards for 2 consecutive years, the Governor may institute procedures pursuant to the Governor's by-pass authority in accordance with § 631.38(b) of this chapter or require redesignation of the substate grantee in accordance with § 631.35 of this chapter, as appropriate.

§ 627.471 Reorganization plan appeals.

(a) A reorganization plan imposed by the Governor, as provided for at §§ 627.470(c)(4) or 627.477(b)(2) of this part, or by the Secretary, as provided for at § 627.470(d) of this part, may be appealed directly to the Secretary without prior exhaustion of local remedies.

(b)(1) Appeals shall be submitted to the Secretary, U.S. Department of Labor, Washington, DC 20210, ATTENTION: ASET. A copy of the appeal shall be provided simultaneously to the Governor.

(2) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification from the Governor or the Secretary.

(3) The appealing party shall explain why it believes the decision to impose the reorganization plan is contrary to the provisions of section 106 of the Act.

(4) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the decision to impose the reorganization plan is inconsistent with section 106 of the Act. The Secretary may consider any comments submitted by the Governor or the SDA, as appropriate. The Secretary shall make a final decision within 60 days after this appeal is received (section 106(j)).

§ 627.475 Oversight and monitoring.

(a) The Secretary may monitor all recipients and subrecipients of financial assistance pursuant to section 163 of the Act.

(b) The Governor is responsible for oversight of all SDA and SSG activities and State-supported programs. The Governor shall develop and make available for review a State monitoring plan. The plan shall specify the mechanism which:

(1) Ensures that established policies to achieve program quality and outcomes meet the objectives of the Act and regulations promulgated thereunder;

(2) Enables the Governor to determine if SDA's and SSG's have demonstrated substantial compliance with the requirements for oversight;

(3) Determines whether the Job Training Plan shall be disapproved consistent with the criteria contained in section 105(b)(1) of the Act;

(4) Regularly examines expenditures against the cost categories and cost limitations specified in the Act and these regulations;

(5) Ensures that all areas of SDA and SSG operations are monitored onsite regularly, but not less than once annually; and

(6) Provides for corrective action to be imposed if conditions in paragraphs (b)(1)–(4) of this section are not met.

(c) The Governor shall issue instructions to SDA's and title III SSG's on the development of a substate monitoring plan. The instructions for development of the monitoring plan, at a minimum, shall address the

monitoring scope and frequency, and the Secretary's emphasis and direction. The substate monitoring plan shall be part of the job training plan.

(d) The Governor shall establish general standards for PIC oversight responsibilities. The required PIC standards shall be included in the Governor's Coordination and Special Services Plan (GCSSP).

(e)(1) The PIC, pursuant to standards established by the Governor, shall establish specific policies for monitoring and oversight of SDA performance which shall be described in the job training plan.

(2) The PIC shall exercise independent oversight over activities under the job training plan which shall not be circumscribed by agreements with the appropriate chief elected official(s) of the SDA.

(f) The PIC and chief elected official(s) may conduct such oversight as they, individually or jointly, deem necessary or delegate oversight responsibilities to an appropriate entity pursuant to their mutual agreement.

§ 627.477 Governor's determination of substantial violation.

(a) Except as provided at paragraph (d) of this section, if, as a result of financial and compliance audits or otherwise, the Governor determines that there is a substantial violation of a specific provision of this Act or the regulations under this Act, and corrective action has not been taken, the Governor shall

(1) Issue a notice of intent to revoke approval of all or part of the plan affected; or

(2) Impose a reorganization plan, which may include

(i) Restructuring the private industry council involved;

(ii) Prohibiting the use of designated service providers;

(iii) Selecting an alternative entity to administer the program for the service delivery area involved;

(iv) Merging the service delivery area into 1 or more other existing service delivery areas; or

(v) Other such changes as the Secretary or Governor determines necessary to secure compliance (section 164(b)(1)).

(b)(1) The actions taken by the Governor pursuant to paragraph (a)(1) of this section may be appealed to the Secretary as provided at § 628.426 of this chapter (section 164(b)(2)(A)).

(2) The actions taken by the Governor pursuant to paragraph (a)(2) of this section may be appealed to the Secretary, as provided at § 627.471 of this part (section 164(b)(2)(B)).

(c) Allegations that the Governor failed to promptly take the actions required under paragraph (a) of this section shall be handled under § 627.607 of this part (section 164(b)(3)).

(d) This section does not apply to remedial actions for SDA failures to meet performance standards, which are provided for at § 627.470 of this part, and do not apply to remedial actions for the failure to comply with procurement standards, which are provided for at § 627.703 of this part.

§ 627.480 Audits.

(a) *Non-Federal Audits.*—(1) *Governments.* Each recipient and governmental subrecipient is responsible for complying with the Single Audit Act of 1984 (31 U.S.C. 7501–7) and 29 CFR part 96, the Department of Labor regulations which implement Office of Management and Budget (OMB) Circular A–128, "Audits of State and Local Governments".

(2) *Non-governmental organizations.* Each non-governmental recipient or subrecipient shall comply with OMB Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions", as implemented by the Department of Labor regulations at 29 CFR part 96. The provisions of this paragraph (a)(2) do not apply to any non-governmental organization that is:

(i) A commercial organization; or

(ii) A hospital or an institution of higher education for which State or local governments choose to apply OMB Circular A–128.

(3) *Commercial organizations.* A commercial organization which is a recipient or subrecipient and which receives $25,000 or more a year in Federal financial assistance to operate a JTPA program shall have an audit that:

(i) Is usually performed annually, but not less frequently than every two years;

(ii) Is completed within one year after the end of the period covered by the audit and submitted to the awarding agency within one month after completion;

(iii) Is either:

(A) An independent financial and compliance audit of Federal funds that includes coverage of the JTPA program within its scope, and is conducted and prepared in accordance with generally accepted government auditing standards; or

(B) An organization-wide audit that includes financial and compliance coverage of the JTPA program within its scope.

(b) *Federal audits.* The notice of audits conducted or arranged by the Office of Inspector General or the Comptroller General shall be provided in advance, as required by section 165(b) of the Act.

(c) *Audit reports.* (1) Audit reports of recipient-level entities and other organizations which receive JTPA funds directly from the U.S. Department of Labor shall be submitted to the Office of Inspector General.

(2) Audit reports of organizations other than those described in paragraph (c)(1) of this section shall be submitted to the entity which provided the JTPA funds.

(d) Each entity that receives JTPA program funds and awards a portion of those funds to one or more subrecipients shall:

(1) Ensure that each subrecipient complies with the applicable audit requirements;

(2) Resolve all audit findings that impact the JTPA program with its subrecipient and ensure that corrective action for all such findings is instituted within 6 months after receipt of the audit report (where appropriate, corrective action shall include debt collection action for all disallowed costs); and

(3) Maintain an audit resolution file documenting the disposition of reported questioned costs and corrective actions taken for all findings. The ETA Grant Officer may request that an audit resolution report, as specified in paragraph (e)(2) of this section, be submitted for such audits or may have the audit resolution reviewed through the compliance review process.

(e)(1) Audits of recipient-level entities and other organizations which receive JTPA funds directly from DOL and all audits conducted by or under contract for the Office of Inspector General shall be issued by the OIG to the Employment and Training Administration after acceptance by OIG.

(2) After receipt of the audit report, the ETA Grant Officer shall request that the State submit an audit resolution report documenting the disposition of the reported questioned costs, *i.e.*, whether allowed or disallowed, the basis for allowing questioned costs, the method of repayment planned or required, and corrective actions, including debt collection efforts, taken or planned.

(f) If the recipient intends to propose the use of "stand-in" costs as substitutes for otherwise unallowable costs, the proposal shall be included with the audit resolution report. To be considered, the proposed "stand-in" costs shall have been reported as uncharged JTPA program costs, included within the scope of the audit, and accounted for in the auditee's financial system, as required by

§ 627.425 of this part, Standards for financial management and participant data systems. To be accepted, stand-in costs shall be from the same title, and program year as the costs which they are proposed to replace, and shall not result in a violation of the applicable cost limitations.

(g) After receiving the audit resolution report, the ETA Grant Officer shall review the report, the recipient's disposition, and any liability waiver request submitted in accordance with § 627.704 of this part. If the Grant Officer agrees with all aspects of the recipient's disposition of the audit, the Grant Officer shall so notify the recipient. If the Grant Officer disagrees with the recipient's conclusion on specific points in the audit, the Grant Officer shall resolve the audit through the initial and final determination process described in § 627.606 of this part.

§ 627.481 Audit resolution.

(a) *Federal audit resolution.* When the OIG issues an audit report to the Employment and Training Administration for resolution, the ETA Grant Officer shall provide a copy of the report to the recipient (if it does not already have the report), along with a request that the recipient submit its audit resolution report as specified in § 627.480(e)(2) of this part, unless the Grant Officer chooses to proceed directly against the recipient pursuant to § 627.601 of this part.

(1) For audits of recipient-level entities and other organizations which receive JTPA funds directly from DOL, the Grant Officer shall request that the audit resolution report be submitted within 60 days from the date that the audit report is issued by the OIG.

(2) For audits of subrecipient organizations, the Grant Officer shall provide the recipient with a 180-day period within which to resolve the audit with its subrecipient(s), and shall request that the audit resolution report be submitted at the end of that 180-day period.

(b) After receiving the audit resolution report, the ETA Grant Officer shall review the report, the recipient's disposition, any liability waiver request, and any proposed "stand-in" costs. If the Grant Officer agrees with all aspects of the recipient's disposition of the audit, the Grant Officer shall so notify the recipient, constituting final agency action on the audit. If the Grant Officer disagrees with the recipient's conclusion on specific points in the audit, or if the recipient fails to submit its audit resolution report, the Grant Officer shall resolve the audit through the initial and final determination process described in § 627.606 of this part. Normally, the Grant Officer's notification of agreement (a concurrence letter) or disagreement (an initial determination) with the recipient's audit resolution report will be provided within 180 days of the Grant Officer's receipt of the report.

(c) *Non-Federal audit resolution.* (1) To ensure timely and appropriate resolution for audits of all subrecipients, including SDA grant recipients and title III SSG's, and to ensure recipient-wide consistency, the Governor shall prescribe standards for audit resolution and debt collection policies and procedures that shall be included in each job training plan in accordance with section 104(b)(12) of the Act.

(2) The Governor shall prescribe an appeals procedure for audit resolution disputes which, at a minimum, provides for:

(i) The period of time, not less than 15 days nor more than 30 days, after the issuance of the final determination in which an appeal may be filed;

(ii) The rules of procedure;

(iii) Timely submission of evidence;

(iv) The timing of decisions; and

(v) Further appeal rights, if any.

§ 627.485 Closeout.

(a) *General.* The Grant Officer shall close out each annual JTPA grant agreement within a timely period after the funding period covered by the award has expired.

(b) Revisions to the reported expenditures for a program year of funds may be made until 90 days after the time limitation for expenditure of JTPA funds, as set forth in section 161(b) of the Act, has expired. The Grant Officer may extend this deadline if the recipient submits a written request with justification. After that time, the Grant Officer shall consider all reports received as final and no additional revisions may be made.

(c) When closing out a JTPA grant, the Grant Officer shall notify the recipient, by certified mail, that, since the time limitation for expenditure of funds covered by the grant award has expired, it is the Department of Labor's intent to close the annual grant as follows:

(1) *Cost adjustment.* Based on receipt of reports in paragraph (b) of this section, the Grant Officer shall make upward or downward adjustments to the allowable costs; and

(2) *Cash adjustment.* DOL shall make prompt payment to the recipient for allowable reimbursable costs; the recipient shall promptly refund to DOL any balance of cash advanced that is in excess of allowable costs for the grant award being closed.

(d) The recipient shall have an additional 60 days after the date of the notice described in paragraph (c) of this section in which to provide the Grant Officer with information as to the reason(s) why closeout should not occur.

(e) At the end of the 60-day period described in paragraph (d) of this section, the Grant Officer shall notify the recipient that closeout has occurred, unless information provided by the recipient, pursuant to paragraph (d) of this section, indicates otherwise.

§ 627.490 Later disallowances and adjustments after closeout.

The closeout of a grant does not affect:

(a) The Grant Officer's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The recipient's obligation to return any funds due as a result of later refunds, corrections, subrecipient audit disallowances, or other transactions;

(c) Records retention requirements in § 627.460 of this part, Requirements for records, and § 627.463 of this part, Public access to records;

(d) Property management requirements in § 627.465 of this part, Property management standards; and

(e) Audit and audit resolution requirements in § 627.480 of this part, Audits and § 627.481 of this part, Audit resolution.

§ 627.495 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms of the grant constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Secretary may take any actions permitted by law to recover the funds.

(b) The Secretary shall charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR ch. II).

Subpart E—Grievances Procedures at the State and Local Level

§ 627.500 Scope and purpose.

(a) *General.* This subpart establishes the procedures which apply to the handling of noncriminal complaints under the Act at the Governor, the SDA, and the SSG levels. Nothing contained in this subpart shall be deemed to prejudice the separate exercise of other legal rights in pursuit of remedies and sanctions available outside the Act.

(b) *Handling of discrimination complaints.* Complaints of discrimination pursuant to section

167(a) of the Act shall be handled under 29 CFR part 34.

(c) *Complaints and reports of criminal fraud, waste, and abuse.* Information and complaints involving criminal fraud, waste, abuse or other criminal activity shall be reported through the Department's Incident Reporting System, directly and immediately to the DOL Office of Inspector General, Office of Investigations, 200 Constitution Avenue NW., Room S5514, Washington, DC 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1-800-347-3756. Other complaints of a noncriminal nature will continue to be handled under the procedures set forth in this part, subparts E and F, and through the Department's Incident Reporting System.

(d) *Non-JTPA remedies.* Whenever any person, organization, or agency believes that a recipient, an SDA, an SSG, or other subrecipient has engaged in conduct that violates the Act and that such conduct also violates a Federal statute other than JTPA, or a State or local law, that person, organization, or agency may, with respect to the non-JTPA cause of action, institute a civil action or pursue other remedies authorized under such other Federal, State, or local law against the recipient, the SDA, the SSG, or other subrecipient, without first exhausting the remedies in this subpart. Nothing in the Act or this chapter shall:

(1) Allow any person or organization to file a suit which alleges a violation of JTPA or regulations promulgated thereunder without first exhausting the administrative remedies described in this subpart; or

(2) Be construed to create a private right of action with respect to alleged violations of JTPA or the regulations promulgated thereunder.

§ 627.501 State grievance and hearing procedures for noncriminal complaints at the recipient level.

(a)(1) Each recipient shall maintain a recipient-level grievance procedure and shall ensure the establishment of procedures at the SDA level and the SSG level for resolving any complaint alleging a violation of the Act, regulations promulgated thereunder, grants, or other agreements under the Act. The procedures shall include procedures for handling complaints and grievances arising in connection with JTPA programs operated by each SDA, SSG, and subrecipient under the Act (section 144(a)).

(2) The procedures described in paragraph (a)(1) of this section shall also provide for resolution of complaints arising from actions taken by the recipient with respect to investigations or monitoring reports.

(b) The recipient's grievance hearing procedure shall require written notice to interested parties of the date, time, and place of the hearing; an opportunity to present evidence; and a written decision. For matters under paragraph (a)(2) of this section, the notice of hearing shall indicate the nature of the violation(s) which the hearing covers.

§ 627.502 Grievance and hearing procedures for noncriminal complaints at the SDA and SSG levels.

(a) Each SDA and SSG, pursuant to guidelines established by the recipient, shall establish procedures for resolving complaints and grievances arising in connection with JTPA programs operated by the SDA, the SSG, and other subrecipients under the Act. The procedures also shall provide for resolution of complaints arising from actions taken by the SDA or the SSG with respect to investigations or monitoring reports of their subgrantees, contractors, and other subrecipients (section 144(a)).

(b) Each SDA and SSG grievance hearing procedure shall include written notice of the date, time, and place of the hearing; an opportunity to present evidence; a written decision; and a notice of appeal rights.

(c) The SDA and SSG procedures shall provide for a decision within 60 days of the filing of the complaint.

§ 627.503 Recipient-level review.

(a) If a complainant does not receive a decision at the SDA or the SSG level within 60 days of filing the complaint or receives a decision unsatisfactory to the complainant, the complainant shall have the right to request a review of the complaint by the recipient. The recipient shall issue a decision within 30 days of receipt of the complaint.

(b) The recipient shall also provide for an independent review, by a reviewer who is independent of the JTPA program, of a complaint initially filed at the recipient level on which a decision was not issued within 60 days of receipt of a complaint or on which the complainant has received an adverse decision. A decision shall be made within 30 days of receipt by the recipient.

(c) A request for review under the provisions of paragraphs (a) or (b) of this section shall be filed within 10 days of receipt of the adverse decision or, if no timely decision is rendered, within 15 days from the date on which the complainant should have received a timely decision.

(d) With the exception of complaints alleging violations of the labor standards under section 143 of the Act, the recipient's decision is final unless the Secretary exercises the authority for Federal-level review in accordance with the provisions at § 627.601 of this part, Complaints and grievances at the Federal level. Complaints alleging violations of section 143 of the Act shall be handled under the procedures set forth at § 627.603 of this part, special handling of labor standards violations under section 143.

§ 627.504 Noncriminal grievance procedure at employer level.

(a) Recipients, SDA's, SSG's, and other subrecipients shall assure that other employers, including private-for-profit employers of participants under the Act, have a grievance procedure relating to the terms and conditions of employment available to their participants (section 144(b)).

(b)(1) Employers under paragraph (a) of this section may operate their own grievance system or may utilize the grievance system established by the recipient, the SDA, or the SSG under this subpart, except as provided for in paragraph (b)(2) of this section. Employers shall inform participants of the grievance procedures they are to follow when the participant begins employment.

(2) If an employer is required to use a certain grievance procedure under a covered collective bargaining agreement, then those procedures should be followed for the handling of JTPA complaints under this section.

(c) An employer grievance system shall provide for, upon request by the complainant, a review of an employer's decision by the SDA, or the SSG and the recipient if necessary, in accordance with §§ 627.501 and 627.502 of this part.

Subpart F—Federal handling of noncriminal complaints and other allegations.

§ 627.600 Scope and purpose.

(a) This subpart establishes the procedures which apply to the filing, handling, and reviewing of complaints at the Federal level. Nothing in the Act or this chapter shall be construed to allow any person or organization to join or sue the Secretary with respect to the Secretary's responsibilities under JTPA except after exhausting the remedies in subpart E of this part and this subpart F.

(b) Complaints of discrimination pursuant to section 167(a) of the Act shall be handled under 29 CFR part 34.

§ 627.601 Complaints and allegations at the Federal level.

(a) The types of complaints and allegations that may be received at the Federal level for review include:

(1) Complaints for which the recipient has failed to issue a timely decision as required by § 627.503 of this part;

(2) Alleged violations of the Act and/or the regulations promulgated thereunder resulting from Federal, State, and/or SDA and SSG monitoring and oversight reviews;

(3) Alleged violations of the labor standards provisions at section 143 of the Act;

(4) Alleged violations of the relocation provisions in section 141(c) of the Act; and

(5) Other allegations of violations of the Act or the regulations promulgated thereunder.

(b) Upon receipt of a complaint or allegation alleging any of the violations listed in paragraph (a) of this section, the Secretary may:

(1) Direct the recipient to handle a complaint through local grievance procedures established under § 627.502 of this part; or

(2) Investigate and determine whether the recipient or subrecipient(s) are in compliance with the Act and regulations promulgated thereunder (section 163(b) and (c)).

(3) Allegations of violations of sections 141(c) or 143 of the Act and § 627.503 of this part shall be handled under paragraph (b)(2) of this section.

§ 627.602 Resolution of investigative findings.

(a)(1) As a result of an investigation or monitoring by the Department, or of the actions specified in paragraph (b)(2) of § 627.601 of this part, the Grant Officer shall notify the recipient of the findings of the investigation and shall give the recipient a period of time, not to exceed 60 days, depending on the nature of the findings, to comment and to take appropriate corrective actions.

(2) The Grant Officer shall review the complete file of the investigation and the recipient's actions. The Grant Officer's review shall take into account the sanction provisions of subpart G of this part. If the Grant Officer agrees with the recipient's handling of the situation, the Grant Officer shall so notify the recipient. This notification shall constitute final agency action.

(3) If the Grant Officer disagrees with the recipient's handling of the matter, the Grant Officer shall proceed pursuant to § 627.606 of this part, Grant officer resolution.

§ 627.603 Special handling of labor standards violations under Section 143 of the Act.

(a) A complaint alleging JTPA section 143 violations may be submitted to the Secretary by either party to the complaint when:

(1) The complainant has exhausted the grievance procedures set forth at subpart E of this part, or

(2) The 60-day time period specified for reaching a decision under a procedure set forth at subpart E of this part has elapsed without a decision (section 144(a) and (d)(1)).

(b)(1) The Secretary shall investigate the allegations contained in a complaint alleging violations of JTPA section 143, make a determination whether a violation has occurred, and issue a decision within 120 days of receipt by the Secretary of the complaint (section 144(c) and (d)).

(2) If the results of the Secretary's investigation indicate that a decision by a recipient under a procedure set forth at subpart E of this part requires modification or reversal, or that the 60-day time period for decision under section 144(a) has elapsed, the Secretary shall modify, reverse, or issue such decision.

(3) If the Secretary modifies or reverses a decision made under a procedure set forth at subpart E of this part, or issues a decision where the 60-day time period has elapsed without a decision, the Secretary shall offer an opportunity for a hearing, in accordance with the procedures under section 166 of the Act and subpart H of this part (sections 144(d)(2) and 166(a)).

(4) If the Secretary upholds a recipient's decision, the determination is the final decision of the Secretary (section 144(d)(3)). This decision is not appealable to the Office of Administrative Law Judges.

(c) Except as provided in paragraph (d) of this section, remedies available under this section to a grievant for violations of section 143 of the Act shall be limited to:

(1) Suspension or termination of payments under the Act;

(2) Prohibition of placement of a participant, for an appropriate period of time, in a program under the Act with an employer that has violated section 143 of the Act, as determined under section 144(d) or (e) of the Act; and/or

(3) Appropriate equitable relief (other than back pay) (section 144(f)(1)).

(d) Available remedies for violations of section 143(a)(4), (b)(1), (b)(3), and (d) of the Act include the remedies listed in paragraph (c) of this section, and may include the following:

(1) Reinstatement of the grievant to the position held prior to displacement;

(2) Payment of lost wages and benefits; and/or

(3) Reestablishment of other relevant terms, conditions, and privileges of employment.

(e) Nothing in this section shall be construed to prohibit a grievant from pursuing a remedy authorized under another Federal, State, or local law for a violation of section 143 of the Act (section 144(g)).

§ 627.604 Alternative procedure for handling labor standards violations under section 143 of the Act—binding arbitration.

(a) A person alleging a violation of section 143 of the Act, as an alternative to processing the grievance under a procedure described at section 144 of the Act, may submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides (section 144(e)(1)).

(b) A person electing to have her/his complaint on JTPA section 143 labor standard violations processed under binding arbitration provisions—

(1) Shall choose binding arbitration before, and in lieu of, initiating a complaint under other grievance procedures established pursuant to section 144 of the Act, and

(2) May not elect binding arbitration for a complaint that previously has been or is subject to any other grievance procedure established under the Act.

(c) Binding arbitration decisions under the provisions of section 144(e) of the Act are not reviewable by the Secretary.

(d) The remedies available to a grievant under binding arbitration are limited to those set forth at section 144(f)(1)(C) and (f)(2) of the Act (section 144(e)(2)).

(e) Nothing in this section shall be construed to prohibit a grievant from pursuing a remedy authorized under another Federal, State, or local law for a violation of section 143 of the Act (section 144(g)).

§ 627.605 Special Federal review of SDA- and SSG-level complaints without decision.

(a) Should the recipient fail to provide a decision as required in § 627.503 of this part, the complainant may then request from the Secretary a determination whether reasonable cause exists to believe that the Act or regulations promulgated thereunder have been violated.

(b) The Secretary shall act within 90 days of receipt of a request made

pursuant to paragraph (a) of this section. Where there is reasonable cause to believe the Act or regulations promulgated thereunder have been violated, the Secretary shall direct the recipient to issue a decision adjudicating the dispute pursuant to recipient and local procedures. The Secretary's action does not constitute final agency action and is not appealable under the Act (sections 166(a) and 144(c)). If the recipient does not comply with the Secretary's order within 60 days, the Secretary may impose a sanction upon the recipient for failing to issue a decision.

(c) A request pursuant to paragraph (a) of this section shall be filed no later than 15 days from the date on which the complainant should have received a decision as required in § 627.503 of this part. The complaint shall contain the following:

(1) The full name, telephone number (if any), and address (if any) of the person making the complaint;

(2) The full name and address of the respondent against whom the complaint is made;

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation;

(4) The provisions of the Act, regulations promulgated thereunder, grant, or other agreement under the Act believed to have been violated;

(5) A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded before any Federal, State, or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority, and the style of the case; and

(6) A statement of the date the complaint was filed with the recipient, the date on which the recipient should have issued decision, and an attestation that no decision was issued.

(d)(1) A request pursuant to paragraph (a) of this section will be considered to have been filed when the Secretary receives from the complainant a written statement sufficiently precise to evaluate the complaint and the grievance procedure used by the recipient, the SDA, or the SSG.

(2) When an imprecise request is received within the 15-day period prescribed in paragraph (a) of this section, the Secretary may extend the period for submission.

§ 627.606 Grant Officer resolution.

(a) When the Grant Officer is dissatisfied with the State's disposition of an audit, as specified in § 627.481 of this part, or other resolution of violations (including those arising out of incident reports or compliance reviews), with the recipient's response to findings resulting from investigations pursuant to § 627.503 of this part, or if the recipient fails to comply with the Secretary's decision pursuant to § 627.605(b) of this part, the initial and final determination process shall be used to resolve the matter.

(b) *Initial determination.* The Grant Officer shall make an initial determination on the findings for both those matters where there is agreement and those where there is disagreement with the recipient's resolution, including the allowability of questioned costs or activities. Such initial determination shall be based upon the requirements of the Act, regulations promulgated thereunder, grants, contracts, or other agreements under the Act.

(c) *Informal resolution.* The Grant Officer shall not revoke a recipient's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the recipient with an opportunity to present documentation or arguments to resolve informally those matters in controversy contained in the initial determination. The initial determination shall provide for an informal resolution period which shall be at least 60 days from issuance of the initial determination. If the matters are resolved informally, the Grant Officer shall issue a final determination pursuant to paragraph (d) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(d) *Grant Officer's final determination.* (1) If the matter is not fully resolved informally, the Grant Officer shall provide each party with a written final determination by certified mail, return receipt requested. For audits of recipient-level entities and other recipients which receive JTPA funds directly from DOL, ordinarily the final determination will be issued not later than 180 days from the date that the OIG issues the final approved audit report to the Employment and Training Administration. For audits of subrecipients conducted by the OIG, ordinarily the final determination will be issued not later than 360 days from the date the OIG issues the final approved audit report to ETA.

(2) A final determination under this paragraph (d) shall:

(i) Indicate that efforts to informally resolve matters contained in the initial determination have been unsuccessful;

(ii) List those matters upon which the parties continue to disagree;

(iii) List any modifications to the factual findings and conclusions set forth in the initial determination;

(iv) Establish a debt, if appropriate;

(v) Require corrective action when needed;

(vi) Determine liability, method of restitution of funds and sanctions; and

(vii) Offer an opportunity for a hearing in accordance with subpart H of this part.

(3) Unless a hearing is requested, a final determination under this paragraph (d) constitutes final agency action and is not subject to further review.

(e) Nothing in this section shall preclude the Grant Officer from issuing an initial determination and/or final determination directly to a subrecipient, in accordance with section 164(e)(3) of the Act. In such a case, the Grant Officer shall inform the recipient of such action.

627.607 Grant Officer resolution of Governor's failure to promptly take action.

(a) An allegation, whether arising from a complaint, from monitoring or other information available to the Department, that a Governor failed to promptly take remedial action of a substantial violation of the Act or the regulations under this Act, as required by § 627.477 of this part, shall be promptly investigated by the Department.

(b) The Grant Officer shall notify the Governor of the findings of the investigation or monitoring and shall give the Governor a period of time, not to exceed 30 days, to comment on the nature of the findings and to take appropriate corrective actions.

(c) The Grant Officer shall review the complete file of the investigation, monitoring, and the Governor's actions.

(d) If the Grant Officer determines that, (1) as a result financial and compliance audits or otherwise, the Governor determined that there was a substantial violation of a specific provision of the Act or the regulations under this Act, and corrective action had not been taken and, (2) the Grant Officer determines that the Governor has not taken the actions required by § 627.477(a), the Grant Officer shall take such actions required by § 627.477(a).

(e) The Grant Officer's determination, unless a hearing is requested, constitutes final agency action and is not subject to further review. (Section 164(b)(3)).

Subpart G—Sanctions for Violations of the Act.

§ 627.700 Purpose and scope.

This subpart describes the sanctions and appropriate corrective actions that may be imposed by the Secretary for violations of the Act, regulations promulgated thereunder, or grant terms and conditions (sections 106(j)(5), 164 (b), (d), (e), (f), (g), and (h)).

§ 627.702 Sanctions and corrective actions.

(a) Except for actions under sections 106(j), 164 (b) and (f), and 167 of the Act and the funding restrictions specified at § 627.423 of this part, Funding restrictions for "high-risk" recipients and subrecipients, the Grant Officer shall utilize initial and final determination procedures outlined in § 627.606, Grant Officer resolution, of this part to impose a sanction or corrective action.

(b) To impose a sanction or corrective action regarding a violation of section 167 of the Act, the Department shall utilize the procedures of 29 CFR part 34.

(c) To impose a sanction or corrective action for failure to meet performance standards, where the recipient has not acted as required at section 106(j)(4), the Grant Officer shall utilize the procedures set forth at § 627.470 (d) and (f).

(d) To impose a sanction or corrective action for noncompliance with the procurement standards provisions set forth at §§ 627.420 and 627.703 of this part, where the recipient has not acted, the Grant Officer may utilize the procedures set forth at section 164(b) of the Act.

(e) To impose a sanction or corrective action for the Governor's failure to promptly take remedial action of a substantial violation as required by § 627.477 of this part, the Grant Officer shall utilize the procedure set forth in § 627.607 of this part.

(f) The recipient shall be held responsible for all funds under its grant(s). The recipient shall hold subrecipients, including SDA's and SSG's, responsible for JTPA funds received through the grant, and may ultimately hold the units of local government which constitute the SDA or the SSG responsible for such funds.

(g) Nothing in this section shall preclude the Grant Officer from imposing a sanction directly against a subrecipient, as authorized in section 164(e)(3) of the Act. In such a case, the Grant Officer shall inform the recipient of such action.

§ 627.703 Failure to comply with procurement provisions.

(a) If, as part of the recipient's annual on-site monitoring of its SDA's/SSG's, the recipient determines that an SDA/SSG is not in compliance with the procurement requirements established in accordance with the provisions at section 164(a)(3) of the Act and § 627.420, of this part, Procurement, and § 627.422 of this part, Selection of service providers, the recipient shall:

(1) Require corrective action to secure prompt compliance; and

(2) Impose the sanctions provided for under the provisions at section 164(b) if the recipient finds that the SDA/SSG has failed to take timely corrective action under paragraph (a)(1) of this section (section 164(a) (4) and (5)).

(b) An action by the recipient to impose a sanction against either an SDA or SSG, in accordance with this section, may be appealed to the Secretary under the same terms and conditions as the disapproval of the respective plan, or plan modification, as set forth at § 628.426(e), Review and approval (section 164(b)(2)).

(c) If, upon a determination under paragraph (a)(2) of this section to impose a sanction under section 164(b) of the Act, the recipient fails to promptly take the actions required under paragraph (a)(2) of this section, the Secretary shall take such actions against the recipient or the SDA/SSG as appropriate (section 164(b)(3)).

§ 627.704 Process for waiver of State liability.

(a) A recipient may request a waiver of liability as described in section 164(e)(2) of the Act.

(b)(1) When the debt for which a waiver of liability is desired was established in a non-Federal resolution, such requests shall be accompanied by a resolution report.

(2) When the ETA Grant Officer is resolving the finding(s) for which a waiver of liability is desired, such request shall be made no later than the informal resolution period described in § 627.606(c) of this part.

(c) A waiver of the recipient's liability can only be considered by the Grant Officer when the misexpenditure of JTPA funds:

(1) Occurred at a subrecipient level;

(2) Was not a violation of section 164(e)(1) of the Act, or did not constitute fraud; or

(3) If fraud did exist, it was perpetrated against the recipient/subrecipient; and:

(i) The recipient/subrecipient discovered, investigated, reported, and prosecuted the perpetrator of said fraud; and

(ii) After aggressive debt collection action, it can be documented that there is no likelihood of collection from the perpetrator of the fraud.

(4) The recipient has issued a final determination which disallows the misexpenditure, the recipient's appeal process has been exhausted, and a debt has been established; and

(5) The recipient requests such a waiver and provides documentation to demonstrate that it has substantially complied with the requirements of section 164(e)(2)(A), (B), (C), and (D) of the Act.

(d) The recipient shall not be released from liability for misspent funds under the determination required by section 164(e) of the Act unless the Grant Officer determines that further collection action, either by the recipient or subrecipient, would be inappropriate or would prove futile.

§ 627.706 Process for advance approval of a recipient's contemplated corrective actions.

(a) The recipient may request advance approval from the Grant Officer for contemplated corrective actions, including debt collection actions, which the recipient plans to initiate or to forego. The recipient's request shall include a description and an assessment of all actions taken by the subrecipient to collect the misspent funds.

(b) Based on the recipient's request, the Grant Officer may determine that the recipient may forego certain collection actions against a subrecipient where:

(1) The subrecipient was not at fault with respect to the liability criteria set forth in section 164(e)(2)(A), (B), (C), and (D) of the Act;

(2) The misexpenditure of funds:

(i) Was not made by that subrecipient but by an entity that received JTPA funds from that subrecipient;

(ii) Was not a violation of section 164(e)(1) of the Act, or did not constitute fraud; or

(iii) If fraud did exist, it was perpetrated against the subrecipient, and:

(A) The subrecipient discovered, investigated, reported, and prosecuted the perpetrator of said fraud; and

(B) After aggressive debt collection action, it can be documented that there is no likelihood of collection from the perpetrator of the fraud.

(3) A final determination which disallows the misexpenditure and establishes a debt has been issued at the appropriate level;

(4) Final action within the recipient's appeal system has been completed; and

(5) Further debt collection action by that subrecipient or the recipient would be either inappropriate or futile.

§ 627.708 Offset process.

(a) In accordance with section 164(d) of the Act, the primary sanction for misexpenditure of JTPA funds is repayment.

(b) A recipient may request that a debt, or a portion thereof, be offset against amounts allotted to the recipient, and retained at the recipient level for administrative costs, under the current or a future JTPA entitlement.

(1) For title II grants, any offset shall be applied against the recipient level 5 percent administrative cost set-aside only and may not be distributed by the recipient among its subrecipients.

(2) For title III grants, any such offset must be applied against that portion of funds reserved by the recipient for recipient level administration only and may not be distributed by the recipient among its subrecipients.

(c) The Grant Officer may approve an offset request, under section 164(d) of the Act, if the misexpenditures were not in violation of section 164(e)(1) of the Act.

(d) If offset is granted, the debt shall not be fully satisfied until the Grant Officer reduces amounts allotted to the State by the amount of the misexpenditure.

(e) The recipient shall not have the authority to reduce allocations to an SDA or SSG for misexpenditure of JTPA funds under section 164(d) of the Act.

Subpart H—Hearings by the Office of Administrative Law Judges

§ 627.800 Scope and Purpose.

(a) The jurisdiction of the Office of the Administrative Law Judges (OALJ) extends only to those complainants identified in sections 141(c), 144(d), 164(f), and 166(a) of the Act.

(b) Actions arising under section 167 of the Act shall be handled under 29 CFR part 34.

(c) All other disputes arising under the Act shall be adjudicated under the appropriate recipient or subrecipient grievance procedures or other applicable law.

§ 627.801 Procedures for filing request for hearing.

(a) Within 21 days of receipt of a final determination imposing a sanction or corrective action or denying financial assistance, the applicant, the recipient, the SDA, the SSG, or other subrecipient, or a vendor against which the Grant Officer has imposed a sanction or corrective action may appeal the Grant Officer's determination to the OALJ. A request for a hearing shall be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street, NW., Suite 400, Washington, DC 20001, with one copy to the departmental official who issued the determination.

(b) The 21-day filing requirement in paragraph (a) of this section is jurisdictional. Failure to timely request a hearing acts as a waiver of the right to hearing.

(c) A request for a hearing under this section shall state specifically those issues of the final determination upon which review is requested. Those provisions of the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, shall be considered resolved and not subject to further review. Only alleged violations of the Act, regulations promulgated thereunder, grant or other agreement under the Act fairly raised in the determination and the request for hearing are subject to review.

(d) The procedures set forth in this subpart apply in the case of a complainant who has not had a dispute adjudicated under the alternative dispute resolution process set forth in § 627.805 of this part within 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period. In addition to including the final determination upon which review is requested, the complainant shall include a copy of any Stipulation of Facts and a brief summary of proceedings.

§ 627.802 Rules of procedure.

(a) The rules of practice and procedure promulgated by the OALJ, at subpart A of 29 CFR part 18, shall govern the conduct of hearings under this section, except that a request for hearing under this section shall not be considered a complaint to which the filing of an answer by DOL or a DOL agency or official is required. Technical rules of evidence shall not apply to hearings conducted pursuant to this part; however, rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross-examination shall apply.

(b) *Prehearing procedures.* In all cases, the ALJ should encourage the use of prehearing procedures to simplify and to clarify facts and issues.

(c) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or things at hearings shall be obtained from the ALJ and shall be issued pursuant to the authority contained in section 163(b) of the Act, incorporating 15 U.S.C. 49.

(d) *Timely submission of evidence.* The ALJ shall not permit the introduction at the hearing of any documentation if such documentation has not been made available for review by the other parties to the proceeding either at the time ordered for any prehearing conference, or, in the absence of such an order, at least 3 weeks prior to the hearing date.

(e) *Burden of production.* The Grant Officer shall have the burden of production to support her or his decision. To this end, the Grant Officer shall prepare and file an administrative file in support of the decision which shall be made part of the record. Thereafter, the party or parties seeking to overturn the Grant Officer's decision shall have the burden of persuasion.

§ 627.803 Relief.

In ordering relief, the ALJ shall have the full authority of the Secretary under section 164 of the Act.

§ 627.804 Timing of decisions.

The ALJ should render a written decision not later than 90 days after the closing of the record.

§ 627.805 Alternative dispute resolution.

(a) Parties to a complaint under § 627.801 of this part, Procedures for filing a request for hearing, may choose to waive their rights to an administrative hearing before the OALJ by choosing to transfer the settlement of their dispute to an individual acceptable to all parties for the purpose of conducting an informal review of the stipulated facts and rendering a decision in accordance with applicable law. A written decision will be issued within 60 days after the matter is submitted for informal review.

(b) The waiver of the right to request a hearing before the OALJ may be revoked if a settlement has not been reached or a decision has not been issued within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process shall be treated as a final decision of an Administrative Law Judge pursuant to section 166(b) of the Act.

§ 627.806 Other authority.

Nothing contained in this subpart shall be deemed to prejudice the separate exercise of other legal rights in pursuit of remedies and sanctions available outside the Act.

Subpart I—Transition Provisions

§ 627.900 Scope and purpose.

(a) Regulations set forth at parts 626, 627, 628, 629, 630, 631, and 637 of 20 CFR chapter V (1993) were amended, effective December 29, 1992, and were published as an interim final rule to provide planning guidance for States and SDA's on the changes made to the JTPA program as a result of the 1992 JTPA amendments (See 57 FR 62004 (December 29, 1992)). The transition provisions of the regulations were amended on June 3, 1992 (see 58 FR 31472, June 3, 1993). Those regulations and the statutory amendments were effective for the program year beginning July 1, 1993 (PY 1993), and succeeding program years. For PY 1992, JTPA programs and activities shall continue under the regulations set forth at 20 CFR parts 626, 627, 628, 629, 630, 631, and 637 (1992).

(b) In order to provide for the orderly transition to and implementation of the provisions of JTPA, as amended by the 1992 amendments, this subpart I applies to the use of JTPA title II and title III funds allotted by formula to the States. Additional guidance on transition matters may be provided in administrative issuances. The provisions in this subpart are operational during the transition period for implementing the 1992 JTPA amendments.

§ 627.901 Transition period.

The transition period ended June 30, 1993 unless otherwise stated. The intent of the transition period is to complete, to the extent possible, activity begun on or before June 30, 1993 under current policy and regulations and to ensure that all requirements mandated by the 1992 JTPA amendments have been implemented.

§ 627.902 Governor's actions.

The following are actions required to be taken prior to July 1, 1993:

(a) Review current policies, practices, procedures, and delivery systems to ensure that they conform to the requirements of the amendments;

(b) Modify the Governor's coordination and special services plan in accordance with instructions issued by the Secretary;

(c) Ensure that SDAs modify job training plans as necessary;

(d) Execute a new Governor/Secretary agreement and a new grant agreement;

(e) Issue procurement standards that comply with the Act and these regulations, as described in § 627.420 of this part, Procurement;

(f) Issue instructions necessary to implement program year 1993 cost categories pursuant to § 627.440 of this part, Classification of costs;

(g) Issue instructions necessary for SDAs to report program expenditures by year of appropriation pursuant to § 627.455 of this part, Reports required;

(h) Certify private industry councils pursuant to § 628.410 of this chapter, Private Industry Council.

§ 627.903 Actions which are at the discretion of the Governor.

(a) Establish a State Human Resource Investment Council (HRIC);

(b) Issue instructions to "grandparent" participants in JTPA programs as of June 30, 1993 for purposes of completing training;

(c) Issue instructions for use of PY 1992 and prior year 6 percent performance standards incentive funds to further develop and implement data collection and management information systems to track the program experience of participants. PY 1993 and subsequent performance standards incentive funds may not to be used for this purpose;

(d) Of the Title II and Title III unobligated balance of funds available as of June 30, 1993, any amount may be reprogrammed into PY 1993 activity. The Department believes these amounts will be minimal and not represent a significant proportion of the funds available. Such reprogrammed funds will be subject to requirements contained in JTPA regulations effective July 1, 1993.

§ 627.904 Transition and implementation.

(a) *Review.* The Governor shall conduct a comprehensive review of the current policies, procedures, and delivery systems relating to programs authorized under the Job Training Partnership Act for the purpose of ensuring the effective implementation of the amendments. Such a review shall include consideration of the appropriateness of current SDA designations, the representation on current State and local councils, the adequacy of current administrative systems, the effectiveness of current outreach, service delivery, and coordination activities, and other relevant matters.

(b) *Governor's Coordination and Special Services Plan (GCSSP).* The GCSSP requires modification to assure conformance to the requirements of the amendments. The plan was to be modified pursuant to instructions issued by the Secretary and shall be submitted to the Secretary for review by May 15, 1993.

(c) *Job training plans.* Service delivery area job training plans will require modification to comply with § 628.420 of this chapter, Job training plan.

(d) *Governor/Secretary agreement and grant agreement.* A new Governor/Secretary agreement is required to assure that the State shall comply with JTPA, as amended, and the applicable rules and regulations; the Wagner-Peyser Act, as amended, and the applicable rules and regulations. A new grant agreement is needed to provide the basis for Federal obligation of funds for programs authorized by Titles I, II, and III, and such other funds as the Secretary may award under the grant.

(e) *Procurement standards.* In order to ensure fiscal accountability and prevent waste, fraud, and abuse in programs administered under JTPA, as amended, the Governor shall prescribe and implement procurement standards meeting the requirements of § 627.420 of this part, Procurement. All procurements initiated on or after July 1, 1993 shall be governed by and follow the requirements in § 627.420 of this part. Initiation of procurement means any sole source or small purchase awarded on or after July 1, 1993 and any Invitation for Bid or Request for Proposal issued on or after July 1, 1993.

(f) *Participants.* In order to have the least possible disruption to program participants, during PY 1993, Governors and SDAs have the flexibility to grandfather participants already enrolled in JTPA programs up to and including June 30, 1993 under existing rules and regulations. All participants in programs on June 30, 1993, will be eligible for transfer to programs operated under the new provisions at any time beginning on July 1, 1993. "Hard to serve" barriers to participation, assessment and Individual Service Strategy provisions of the amendments will not apply to participants enrolled prior to July 1, 1993 or to 1993 Title II-B participants.

(g) *Cost categories.* (1) Cost categories applicable to PY 1992 and earlier funds will be subject to prior regulations either until the funds have been exhausted or program activity has been completed. In order to assist the orderly transition to and implementation of the new requirements of the 1992 JTPA amendments, an increase is allowed in the administrative cost limitation for PY 1992 funds from 15 percent to 20 percent, with a corresponding adjustment to cost limitations for training and participant support. Specifically, not less than 80 percent of the title II-A funds shall be expended for training and participant support, and not less than 65 percent shall be expended for training.

(2) Any prior year's carryover funds made available for use in PY 1993 will be subject to the reporting requirements

and cost categories applicable to PY 1993 funds.

(3) In determining compliance with the JTPA cost limitations for PY 1992, Governors may either:

(i) Determine cost limitation compliance separately for funds expended in accordance with paragraphs (g)(1) and (g)(2) of this section; or

(ii) Determine compliance for each cost category against the total PY 1992 funds, whether expended in accordance with the Act and regulations in effect prior to the 1992 amendments to JTPA or in accordance with the amended Act and these regulations. Using this option, the total combined funds expended for training and direct training should be at least 65 percent of PY 1992 SDA allocations.

(4) In addition to the institutions specified in § 627.440(d)(1)(vi)(B), the costs of tuition and entrance fees of a postsecondary vocational institution specified at section 481(c) of the Higher Education Act (20 U.S.C. 1088(c)) may be charged to direct training services through June 30, 1995, when such tuition charges or entrance fees are not more than the educational institution's catalog price, are necessary to receive specific training, are charged to the general public to receive such training, and are for the training of participants.

(h) *Financial reporting.* Notwithstanding reprogramming, expenditures must be recorded separately by year of appropriation.

(i) *Private Industry Council.* The private industry councils shall be certified pursuant to § 628.410 of this chapter, Private Industry Council.

(j) *Grievances, investigations, and hearings.* Generally, all grievances, investigations and hearings pending on or before June 30, 1993 should be resolved and settled under prior rules and procedures. Grievances, investigations, and hearings occurring on or after July 1, 1993 will be governed by the procedures described in subparts E, F, and H of this part 627.

(k) *Summer program.* (1) The Title II–B Summer Youth Employment Program for 1993 shall be governed by the Act and regulations in effect prior to the Amendments (prior to September 7, 1992).

(2) Up to 10 percent of the 1993 title II–B funds available may be transferred to the title II–C program.

(l) *SDA designation.* At the Governor's discretion, SDA's designated prior to July 1, 1992 need not be subject to the provisions of § 628.405, Service delivery areas.

(m) *Program implementation.* The implementation by the States and SDA's of certain new program design requirements, particularly objective assessment and development of individual service strategies (ISS), may require additional time to fully implement beyond July 1, 1993. Reasonable efforts to implement the provisions of §§ 628.515, 628.520, and 628.530. as soon as possible after July 1, 1993, are expected to be made. However, it is not expected that every new participant will initially receive objective assessment, ISS, and referral to non-title II services for a period of 6 months, or until January 1, 1994.

(n) *Out-of-school youth ratio.* The 50-percent out-of-school participants requirement for title II–C will be phased in during PY 1993 and will not be the subject of compliance review until PY 1994, beginning July 1, 1994. During PY 1993, however, SDA's must show significant improvement in the proportion of out-of-school youth being served and performance in increasing the service ratio will be monitored by the States and DOL during this implementation period.

(o) *Administrative issuances.* Other implementation issues may be handled by administrative issuance. ETA will transmit such guidance directly to all Governors via a Training and Employment Guidance Letter (TEGL). Such TEGL's will be published as Notices in the **Federal Register** (section 701(i)).

§ 627.905 Guidance on contracts and other agreements.

The Department does not intend for contracts, agreements, inter-agency agreements, retainers, and similar arrangements to be negotiated and/or entered into for the sole purpose of applying previously existing rules and regulations. The 1992 JTPA amendments were effective July 1, 1993. The Department intends that contracts, awards and agreements entered into on or before June 30, 1993 are to be used to serve and/or train participants enrolled on or before June 30, 1993, unless the contracts and agreements are modified to comply with the new amendments and regulations.

§ 627.906 Determinations on State and SDA implementation.

(a) The Department expects that the States and SDA's will fully implement the provisions of the Act and these regulations regarding procurement, cost principles, cost categories, cost limitations, participant service requirements and eligibility beginning July 1, 1993.

(b) The Department expects that the implementation by the States and SDA's of the program design features in these regulations, particularly objective assessment and development of the ISS, may require additional time beyond July 1, 1993 to fully implement.

(c) In deciding to allow or disallow questioned costs related to the implementation of the provisions described in paragraph (b) of this section, the Grant Officer will consider the extent to which the State's and SDA's have made good faith efforts in properly implementing such provisions in the period July 1, 1993 through June 30, 1994.

2. Part 628 is revised to read as follows:

PART 628—PROGRAMS UNDER TITLE II OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—Scope and Purpose

Sec.

628.100 Scope and purpose of part 628.

Subpart B—State Planning

628.200 Scope and purpose.
628.205 Governor's coordination and special services plan.
628.210 State Job Training Coordinating Council.
628.215 State Human Resource Investment Council.

Subpart C—State Programs

628.300 Scope and purpose.
628.305 State distribution of funds.
628.310 Administration.
628.315 Education coordination and grants.
628.320 Services for older individuals.
628.325 Incentive grants, capacity building and technical assistance.

Subpart D—Local Service Delivery System

628.400 Scope and purpose.
628.405 Service delivery areas.
628.410 Private Industry Council.
628.415 Selection of SDA grant recipient and administrative entity.
628.420 Job training plan.
628.425 Review and approval.
628.426 Disapproval or revocation of the plan.
628.430 State SDA submission.

Subpart E—Program Design Requirements for Programs Under Title II of the Job Training Partnership Act

628.500 Scope and purpose.
628.505 Eligibility.
628.510 Intake, referrals, and targeting.
628.515 Objective assessment.
628.520 Individual service strategy.
628.525 Limitations.
628.530 Referrals of participants to non-title II programs.
628.535 Limitations on job search assistance.
628.540 Volunteer program.
628.545 Linkages and coordination.
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Subpart F—The Adult Program

628.600 Scope and purpose.
628.605 Eligibility.
628.610 Authorized services.

Subpart G—The Summer Youth Employment and Training Program

628.700 Scope and purpose.
628.701 Program goals and objectives.
628.702 Enriched Educational Component.
628.703 Private Sector Summer Jobs.
628.704 Eligibility.
628.705 SYETP authorized services.
628.710 Period of program operation.

Subpart H—Youth Training Program

628.800 Scope and purpose.
628.803 Eligibility.
628.804 Authorized services.

Authority: 29 U.S.C. 1579(a).

Subpart A—Scope and Purpose

§ 628.100 Scope and purpose of part 628.

(a) This part sets forth requirements for implementation of programs under title II of the Job Training Partnership Act, and includes the councils described in subpart B that have responsibilities under titles I, II, and III. In this part, the provisions generally pertaining to title II are covered in subparts B, C, D, and E. Matters specific to titles IIA, II–B, or II–C are addressed in subparts F, G, or H, respectively.

(b) Title II–A Adult Training programs are to prepare adults for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased occupational and educational skills, reduced welfare dependency, and result in improved long-term employability.

(c) Title II–B Summer Youth Employment and Training programs are to provide eligible youth with exposure to the world of work, to enhance the basic education skills of youth, to encourage school completion or enrollment in supplemental or alternative school programs and to enhance the citizenship skills of youth.

(d) Title II–C Youth Training programs are to improve the long-term employability of youth; to enhance the educational, occupational and citizenship skills of youth; to encourage school completion or enrollment in alternative school programs; to increase the employment and earnings of youth; to reduce welfare dependency; and to assist youth in addressing problems that impair their ability to make successful transition from school to work, to apprenticeship, to the military or to postsecondary education and training.

Subpart B—State Planning

§ 628.200 Scope and Purpose.

This subpart provides requirements for the submission of the Governor's Coordination and Special Services Plan, as well as the procedures for plan review. This subpart also contains requirements for the composition and responsibilities of the State Job Training Coordinating Council and the State Human Resource Investment Council.

§ 628.205 Governor's coordination and special services plan.

(a)(1) *Submittal.* By a date established by the Secretary, each State seeking financial assistance under the Act shall submit to the Secretary, biennially, the Governor's coordination and special services plan (GCSSP) encompassing two program years (section 121(a)).

(2) The GCSSP shall address the requirements of section 121(b) of the Act, including a description of the Governor's coordination criteria; the measures taken by the State to ensure coordination and prevent duplication with the Job Opportunities and Basic Skills (JOBS) program; the certification of the implementation of the procurement system, as required at section 164(a)(6) of the Act; the technical assistance and training plan; goals, and the efforts to accomplish such goals, for the training and placement of women in nontraditional employment and apprenticeship; the projected use of resources, including oversight of program performance; program administration; program financial management and audit resolution procedures; capacity building; priorities and criteria for State incentive grants; and performance goals for State supported programs (section 121(b)).

(b) *GCSSP review.* The Secretary shall review the GCSSP for overall compliance with the provisions of the Act. If the GCSSP is disapproved, the Secretary shall notify the Governor, in writing, within 45 days of submission of the reasons for disapproval so that the Governor may modify the plan to bring it into compliance with the Act (section 121(d)).

(c) *Information to SDA's.* (1) In the year preceding the program years for which the plan is developed, the State shall make available to the SDA's in the State information on its plans to undertake State activities in program areas including education coordination grants, services to older workers, and capacity building.

(2) The information described in paragraph (c)(1) of this section shall be provided to SDA's in sufficient time for SDA's to take it into consideration in developing local job training plans.

§ 628.210 State Job Training Coordinating Council.

(a) The Governor shall appoint a State Job Training Coordinating Council (SJTCC) pursuant to section 122 of the Act. In lieu of a SJTCC, the Governor may establish and utilize a State Human Resource Investment Council (HRIC) pursuant to section 701 of the Act and in accordance with § 628.215 of this part.

(b) Consistent with section 122(a)(3) of the Act, the SJTCC shall be composed as follows: 30 percent, business and industry representatives; 30 percent, State and local government and local education agency representatives; 30 percent, organized labor and community-based organization representatives; and 10 percent, representatives from the general public. The SJTCC shall have the specific functions and responsibilities outlined in sections 122, 317, and 501 of the Act.

(c) Funding for the SJTCC shall be provided pursuant to sections 202(c)(1)(A) and 262(c)(1)(A) of the Act.

(d) The SJTCC shall:

(1) Analyze the SDAs' reports made pursuant to section 104(b)(13) of the Act and make recommendations for technical assistance and corrective action, and

(2) Prepare a summary of such reports and disseminate them to SDA's and service providers in the State and to the Secretary (section 122(a)(5) and (6)).

§ 628.215 State Human Resource Investment Council.

(a) *Establishment and responsibilities.* The State may, in accordance with sections 701, 702, and 703 of the Act, establish a State Human Resource Investment Council (HRIC). The HRIC's responsibilities are described at section 701(a) of the Act. The HRIC shall carry out the following responsibilities:

(1) Review the provision of services and the use of funds and resources under applicable Federal human resource programs and advise the Governor on methods of coordinating such provision of services and use of funds and resources consistent with the laws and regulations governing such programs;

(2) Advise the Governor on the development and implementation of State and local standards and measures relating to applicable Federal human resource programs and coordination of such standards and measures; and

(3) Carry out the duties and functions prescribed for existing State councils described under the laws relating to the

applicable Federal human resource programs, including the responsibilities of the State Council on Vocational Education (SCOVE) under Section 112 of the Carl D. Perkins Vocational and Applied Technology Education Act.

(4) Perform other functions as specified by the Governor (section 701).

(b) *Applicable Programs.* For the purposes of this section, the programs included are those listed at section 701(b)(2) of the Act. A program shall be included only if the Governor and the head of the State agency responsible for the administration of the program jointly agree to include such program. In addition, programs under the Carl Perkins Vocational and Applied Technology Act shall require the agreement of the State council on vocational education (section 701(b)(1)(B)).

(c) *Composition.* (1) The Governor shall establish procedures to ensure appropriate representation on the HRIC from among the categories of representation specified in section 702 of the Act.

(2) In addition, when the functions and responsibilities of the SCOVE are included on the HRIC, the Governor is encouraged to consider appointing the State Director for Vocational Education as a representative on the HRIC.

(d) *Funding.* (1) Funding to carry out the functions of the HRIC shall be available pursuant to section 703(a) of the Act.

(i) The costs associated with the operation of the HRIC should be allocated among the various funding sources based on the relationship of each funding source or program to total spending of all applicable funding sources and programs (section 703(d)).

(ii) Costs of the HRIC that are in excess of costs paid by funds from participating State agencies are, subject to the availability of funds from applicable JTPA sources, allowable JTPA costs (section 703(a) and (d)).

(2) A HRIC which meets the requirements of title VII and includes each of the programs listed at section 701(b)(2)(A) of the Act shall be authorized to use JTPA State Education Coordination and Grants funds (section 123(a)(2)(D)(ii)).

(e) *Replacement of other councils.* A HRIC meeting the requirements of title VII of the Act shall replace the councils of the participating programs listed at section 701(b)(2)(A) of the Act.

(f) *Expertise.* The Governor shall ensure that in the composition of the HRIC and the staff of the HRIC there exists the proper expertise to carry out the functions of the HRIC and the council(s) it replaces (sections 702(c)(2) and 703(b)).

(g) *Certification.* Each State, as part of the certification process to the Secretary, shall ensure that the council meets the requirements of sections 701, 702, and 703. This certification shall be made in writing and submitted to the Secretary, with a copy provided to the Secretary of Education, at least 90 days before the beginning of each period of 2 program years for which a job training plan is submitted under the Act.

Subpart C—State Programs

§ 628.300 Scope and purpose.

This subpart provides requirements for the State-operated programs including the education coordination and grants, services to older workers, and incentive grants to SDA's and grants to SDA's for capacity building and technical assistance.

§ 628.305 State distribution of funds.

(a) The funds made available to the Governor under sections 202(c) and 262(c) of the Act shall be used to carry out activities and services under this subpart.

§ 628.310 Administration.

Funds provided to the Governor under sections 202(c)(1)(A) and 262(c)(1)(A) of the Act may be used for overall administration, management, oversight of program performance; technical assistance to SDA's failing to meet performance standards, as described in section 106(j)(1) of the Act; auditing; and activities under sections 121 and 122 of the Act.

§ 628.315 Education coordination and grants.

(a) *Governor's responsibilities.* The Governor shall allocate funds available pursuant to sections 202(c)(1)(C) and 262(c)(1)(C) of the Act to any State education agency. For the purposes of this section, "State education agency" shall not include the State agency which administers the JTPA program within the State or other agencies which do not have education as a primary and operational function, such as correctional agencies, although this limitation shall not preclude such an agency from being an ultimate subrecipient of funds (section 123(a)(1)).

(b) *Agreements.* (1) The State education agency to be allocated funds under section 123(a)(1) of the Act shall participate in joint planning activities with the Governor in order to develop a plan which shall be submitted in the GCSSP (section 123(c)).

(2) The Governor and the State education agency shall jointly agree on the plan required in paragraph (b)(1) of this section, which shall include a description of the agreements described in paragraph (b)(3) of this section (section 123(c)).

(3) Projects to undertake the activities set forth in section 123(a)(2) shall be conducted in accordance with agreements between the State education agency(ies) and administrative entities in service delivery areas in the State. The agreements may include other entities such as State agencies, local education agencies and alternative service providers (section 123(b)(1)(B)).

(4)(i) When there is a failure by the State education agency and the Governor to develop the joint plan described in paragraph (b)(2) of this section, the Governor shall not allocate funds under section 123(a)(1) to such education agency nor shall such funds be available for expenditure by the Governor (section 123(c)).

(ii) When no State education agency accepts the allocation of funds under section 123(a)(1), or when there is a failure to reach the agreement(s) specified in paragraph (b)(3) of this section, the funds may only be used by the Governor pursuant to section 123(e) and in accordance with the GCSSP (section 123(e)).

(c) *Allowable activities.* (1) Funds made available for education coordination and grants under section 123 of the Act shall be used to pay the Federal share of education coordination and grants projects (section 123(a)(2)).

(2) Projects, as defined at section 123(a)(2)(A), (B), and (C) of the Act shall be conducted for eligible individuals and should include those which:

(i) Provide school-to-work services of demonstrated effectiveness, including youth apprenticeship programs;

(ii) Provide literacy and lifelong learning opportunities and services of demonstrated effectiveness, including basic education and occupational skills training; and

(iii) Provide statewide coordinated approaches to education and training services, including model programs, designed to train, place, and retain women in nontraditional employment (section 123(a)).

(3) Projects for coordination of education and training may also be conducted which may include support activities pertaining to the HRIC which meets the requirements of title VII.

(d) *Expenditure requirements.* (1)(i) At least 80 percent of the funds allocated under section 202(c)(1)(C) and section 262(c)(1)(C) of the Act shall be expended to pay for the Federal share of projects described in paragraph (c)(2) of this section (section 123(d)(2)(B)).

(ii) The Governor shall assure that not less than 75 percent of the funds expended for such projects are expended for projects for eligible economically disadvantaged participants who experience barriers to employment. For purposes of meeting this requirement, participants meeting the conditions of section 263(a)(2)(B) and (C) and (g) of the Act may be considered economically disadvantaged (section 123(d)(2)(C)).

(iii) Priority for funds not expended for the economically disadvantaged shall be given to title III participants and persons with barriers to employment.

(iv) The Governor may assure compliance with the requirement to serve participants with barriers to employment by targeting projects to particular barrier groups (*e.g.*, school dropouts).

(2) Not more than 20 percent of funds allocated under section 202(c)(1)(C) of the Act may be expended to:

(i) Facilitate coordination of education and training services for participants in the projects described in section 123(a)(2)(A), (B) and (C), or

(ii)(A) Support activities pertaining to a HRIC that meets the requirements of § 628.215 of this part, or

(B) Support activities pertaining to a State council which carries out functions similar to those of a HRIC if such council was established prior to July 1, 1992.

(e) *Contribution.* (1) Except as provided in paragraph (e)(3) of this section, the State shall provide for the contribution of funds, other than the funds made available under this Act, of a total amount equal to the amounts allotted under Section 123;

(2) The Governor shall define and assure the provision of adequate resources by the State to meet the requirements of paragraph (e)(1) of this section. Such amount may include the direct cost of employment and training services provided by other Federal programs or agencies if such use for matching is in accordance with the applicable Federal law governing the use of such funds.

(3) When there is a failure to reach agreement between the State education agency and the administrative entity in the service delivery area, as set forth in paragraph (b)(3) of this section, the requirement for the contribution of funds shall not apply.

(f) Eligible youth, age 14 through 15, may be served in the program under this section to the extent set forth in the agreements under paragraph (b)(3) of this section.

§ 628.320 Services for older individuals.

(a) *Consultation.* (1) The Governor shall consult with the appropriate PIC's and chief elected official(s) prior to entering into agreements to provide services under section 204(d) and to assure that services provided to participants under section 204(d) are consistent with the programs and activities provided in the SDA to eligible older participants.

(2) The GCSSP shall specify the process for accomplishing the consultation required by paragraph (a)(2) of this section.

(b) Funds available under section 204(d) shall be used by the Governor to provide services on an equitable basis throughout the State, taking into account the relative share of the population of eligible older individuals residing in each SDA and the participation of such older individuals in the labor force.

(c) *Delivery of services.* (1) Services to participants eligible under section 204(d) shall be delivered through agreements with SDA's, private industry councils, public agencies, private nonprofit organizations (including veterans organizations) and private-for-profit organizations.

(2) Priority for delivery of services under this section shall be given to agencies and organizations which have a demonstrated effectiveness in providing training and employment services to such older individuals.

(d) *Eligibility.* (1) Individuals provided services under section 204(d) of the Act shall be economically disadvantaged, based on criteria applicable in the SDA in which they reside, and shall be age 55 or older. However, each program year not more than 10 percent of participants enrolled under section 204(d) may be individuals who are not economically disadvantaged but have serious barriers to employment as identified by the Governor and have been determined within the last 12 months to meet the income eligibility requirements for title V of the Older Americans Act of 1965 (section 204(d)(5)(B)(i)).

(2) The following criteria shall apply to joint programs for older workers.

(i) In order to carry out a joint program with operators of programs under title V of the Older Americans Act, there shall be a written financial or non-financial agreement, or written joint program description when the entity which operates the JTPA and title V program are the same.

(ii) Joint programs under this paragraph (d)(2) may include referrals between programs, co-enrollment and provision of services.

(iii) Under agreements pursuant to this paragraph (d)(2), individuals eligible under title V of the Older Americans Act shall be deemed to satisfy the requirements of section 203(a)(2) of the Act (Older Americans Act, Pub. L. 103–171, section 510).

(e) *Applicable requirements.* Except as provided in the Act, the provisions of title II–A shall apply to programs conducted under section 204(d) (section 204(d)(6)).

(f) The Governor shall make efforts to coordinate the delivery of services under section 204(d) with the delivery of services under title V of the Older Americans Act of 1965. Such coordination may include coenrollment, coordination of a continuum of services between this section and title V of the Older Americans Act and other appropriate linkages.

(g) The Governor shall give consideration to assisting programs involving training for jobs in growth industries and jobs reflecting the use of new technological skills (section 204(d)(3)).

§ 628.325 Incentive grants, capacity building, and technical assistance.

(a) Funds available to the Governor under sections 202(c)(1)(B) and 262(c)(1)(B) of the Act shall be used to provide incentive grants to SDA's and for capacity building and technical assistance.

(b) *Incentive grants.* (1) Not less than 67 percent of the funds available under sections 202(c)(1)(B) and 262(c)(1)(B) of the Act shall be used by the Governor to provide incentive grants for programs, except programs under section 204(d) of the Act, exceeding title II performance standards (section 106(b)(7)).

(2) Incentive grant funds under this section shall be distributed by the Governor among SDA's within the State pursuant to section 106(b)(7) of the Act.

(3) The Governor shall, as part of the annual statement of goals and objectives required by section 121(a)(1) of the Act, provide SDA's with the specific policies and procedures to implement section 106(b)(7) of the Act.

(4) In a State which is the service delivery area, incentive grant funds shall be distributed in a manner determined by the Governor and described in the GCSSP. The Governor shall give consideration to recognizing the performance of service providers within the State.

(5) SDA's should use incentive grant funds for capacity building and technical assistance activities and/or for the conduct of allowable Title II activities for eligible youth, eligible

adults, or both, at the discretion of the SDA.

(c) *Capacity building and technical assistance.* (1) Up to 33 percent of the funds available under sections 202(c)(1)(B) and 262(c)(1)(B) of the Act may be used by the Governor to provide capacity building and technical assistance efforts aimed at improving the competencies of the personnel who staff and administer JTPA including SDA's, service providers, State staff, private industry councils, other job training councils and related human service systems provided for in section 205(a) of the Act.

(2) In providing capacity building and technical assistance activities, the Governor shall:

(i) Consult with SDA's concerning capacity building and technical assistance activities consistent with the process specified in the GCSSP;

(ii) Ensure that the use of funds will assist front line staff providing services to participants by directing resources to SDA and service provider staff for capacity building efforts, building a statewide capacity building strategy based on an assessment of local capacity building needs developed in cooperation with the SDA's, and/or delivering training and technical assistance directly to the local level;

(iii) Ensure that expenditures for the purchase of hardware/software are only for the development of Statewide communications and training mechanisms involving computer-based communication technologies that directly facilitate interaction with the National Capacity Building and Information Dissemination Network (National Network) described in section 453 of the Act and that facilitate the use of computer-based training techniques in capacity building and technical assistance activities;

(iv) Ensure that State and local capacity building efforts are coordinated and integrated with the National Network, pursuant to sections 202(c)(3)(B) and 262(c)(3)(B) of the Act, and that materials developed with funds under this section are made available to be shared with other States, SDA's and the National Network. States and SDA's retain the flexibility to tailor Network products to their own needs and/or to produce and train on similar or related products when local circumstances so dictate and;

(v) Provide technical assistance to service delivery areas failing to meet performance standards pursuant to section 106(j)(2) of the Act.

(d) *Cost sharing.* (1) Cost sharing approaches are encouraged among States, SDA's and/or among other Federal, State, and local human service programs, including those listed in section 205(a) of the Act, in developing electronic communications, training mechanisms and/or contributing to the National Network.

(2) All shared costs shall be allocated among the contributing funding sources on the basis of benefits received.

Subpart D—Local Service Delivery System

§ 628.400 Scope and purpose.

This subpart sets forth requirements for the selection of service delivery areas, the establishment and responsibilities of the private industry council, and the selection of the SDA grant recipient and administrative entity. This subpart also contains the requirements for the local job training plan as well as the procedures for its review and approval by the State.

§ 628.405 Service delivery areas.

(a)(1) The Governor, after receiving recommendations from the SJTCC, shall designate SDA's within the State in accordance with the provisions of section 101 of the Act.

(2) SDA's may not be designated by the Governor more frequently than once every two years, and such designations shall be made to coincide with the two-year plan cycle for the GCSSP and local job training plans (*i.e.*, the designation cannot be made for an off-year in this cycle).

(3) Each request for designation as an SDA shall be submitted in a form and by a date established by the Governor. The procedures established by the Governor shall provide for the treatment of existing SDA's for the purposes of submitting SDA designation requests.

(b)(1) The Governor shall approve SDA designation requests from entities with a population of 200,000 or more that satisfy the criteria specified in section 101(a)(4)(A) of the Act.

(2) When there are competing applications under paragraph (b)(1) of this section for the same geographic area, the Governor shall designate the entity with the population closest to 200,000, if the remaining reduced area also continues to satisfy the criteria specified in section 101(a)(4)(A) of the Act. The Governor shall offer to designate the remaining reduced area as an SDA as well.

(3) When there are competing applications under paragraph (b)(1) of this section for the same geographic area and the designation of the entity with the population closest to 200,000 would have the effect of reducing the population of the competing entity to below a population of 200,000, the Governor has the discretion to determine which request to honor.

(d) The Governor may, in accordance with section 101(a)(4)(B) of the Act, approve a request to be a SDA from any unit, or contiguous units, of general local government, without regard to population, which serves a substantial portion of a labor market area. In making such designations, the Governor shall evaluate the degree to which a proposed service delivery area meets criteria established by the Governor which, at a minimum, shall include:

(1) The capability to effectively deliver job training services;

(2) The capacity to administer the job training program in accordance with the Act, applicable rules and regulations and State standards; and

(3) The portion of a labor market to be served.

(e) For the purposes of SDA designations under section 101(a)(4)(A) and (B) of the Act, the term "substantial part" and "substantial portion" of a labor market area shall be defined by the Governor, but shall not be less than 10% of the population of a labor market area.

(f) All areas within the State shall be covered by designated SDA's. After honoring all requests for designation from eligible entities under section 101(a)(4)(A) of the Act, and making any qualified discretionary designations under section 101(a)(4)(B) of the Act, the Governor shall include uncovered areas in the State within other designated SDA's willing to accept them or within a State administered SDA.

(g) *Appeals.* (1) Only an entity which meets the requirements of section 101(a)(4)(A) of the Act for designation as a service delivery area, but which has had its request to be an SDA denied, may appeal the Governor's denial of service delivery area designation to the Secretary of Labor.

(2) Appeals made pursuant to paragraph (g)(1) of this section shall be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal shall simultaneously be provided to the Governor.

(3) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification of the denial from the Governor.

(4) The appealing party shall explain why it believes the denial is contrary to the provisions of section 101 of the Act.

(5) The Secretary shall accept the appeal and make a decision only with regard to whether or not the denial is inconsistent with section 101 of the Act. The Secretary may consider any

comments submitted by the Governor. The Secretary shall make a final decision within 30 days after receipt of the appeal (section 101(a)(4)(C)).

(6) The Secretary shall notify the Governor and the appellant in writing of the Secretary's decision.

§ 628.410 Private Industry Council.

(a) *Certification of the PIC.* (1) The chief elected official(s) of the SDA shall establish and the Governor shall certify the private industry council (PIC) pursuant to section 102 of the Act.

(2) The Governor shall review the certification of the PIC biennially, one year prior to the effective date of the 2-year SDA job training plan to the Governor. The Governor's review shall include:

(i) The PIC composition, which shall be consistent with section 102(a), (b), (c), and (d) of the Act and shall include the names of individuals nominated and their qualifications;

(ii) The nomination process;

(iii) The written agreement(s) among the appropriate chief elected official(s) and the PIC, including procedures for the development of the SDA job training plan and the selection of the grant recipient and administrative entity.

(3) The chief elected official shall select labor representatives for the PIC from individuals recommended by recognized State and local labor federations. For purposes of this section, a labor federation is an alliance of two or more organized labor unions for the purpose of mutual support and action. An example of a recognized labor federation is the AFL–CIO.

(b) *Responsibilities of the PIC.* Pursuant to section 103 of the Act, the PIC shall:

(1) Provide policy and program guidance for all activities under the job training plan for the SDA;

(2) In accordance with agreements negotiated with the appropriate chief elected official(s), determine the procedures for development of the job training plan and select the grant recipient and administrative entity for the SDA;

(3) *Independent oversight.* As specified in subpart D of part 627 of this chapter, the PIC shall exercise independent oversight over programs and activities under the job training plan, which oversight shall not be circumscribed by agreements with the appropriate chief elected official(s) of the SDA;

(4) Be a party to the designation of substate grantees under title III, as set forth in § 631.35 of this chapter;

(5) Establish guidelines for the level of skills to be provided in occupational skills training programs funded by the administrative entity;

(6) Consult with the Governor on agreements to provide services for older individuals under section 204(d) of the Act;

(7) Establish youth and adult competency levels consistent with performance standards established by the Secretary, based on such factors as entry level skills and other hiring requirements, in consultation with educational agencies and, where appropriate, with representatives of business, organized labor and community-based organizations pursuant to section 106(b)(5) and 107(d); and

(8) Identify occupations for which there is a demand in the area served.

(c) *Substate plan.* The PIC shall be provided the opportunity to review and comment on a substate grantee plan under title III of the Act prior to the submission of such plan to the Governor (section 313(a)).

(e) The State Employment Service agency shall develop jointly with each appropriate PIC and chief elected official(s) for the SDA those components of the plans required under the Wagner-Peyser Act which are applicable to the SDA. (See part 652 of this chapter).

(f) *Single SDA States.* (1) In any case in which the service delivery area is a State, the SJTCC or a portion of the SJTCC may be reconstituted as a PIC if the PIC meets the requirements of section 102(a) of the Act.

(2) When the service delivery area is a State and the functions of the SJTCC are embodied in the HRIC, the HRIC or a portion of the HRIC may be reconstituted as a PIC if the requirements for private sector business representation at section 102(a)(1) of the Act are met (section 102(h)).

§ 628.415 Selection of SDA grant recipient and administrative entity.

(a) *Selection of SDA grant recipient.* (1) The SDA grant recipient and the entity to administer the SDA's job training plan for title II, developed pursuant to section 104 of the Act, shall be selected by agreement of the PIC and chief elected official(s) of the SDA. These may be the same or different entities.

(2) The specific functions and responsibilities of the entities described in paragraph (a)(1) of this section shall be spelled out in the agreement between the PIC and the chief elected official(s), and shall specifically address the provisions of section 141(i) of the Act (section 103(b)(1)).

(b) *Subrecipient requirements.* (1) The Governor may establish requirements pertaining to subrecipient, including SDA grant recipient, responsibility for JTPA funds.

(2) The requirements of paragraph (b)(1) of this section shall not preclude the selection of any entity identified in section 103(b) of the Act as SDA grant recipient.

§ 628.420 Job training plan.

(a) The Governor shall issue instructions and schedules to assure that job training plans and plan modifications for SDA's within the State conform to all requirements of the Act.

(b) The Governor's instructions for development of the SDA's job training plan shall require that the plan contain the following information:

(1) A complete and detailed discussion of the elements found in section 104(b) of the Act, including goals for the training and training related placement of women in nontraditional employment and apprenticeships;

(2) A discussion of the SDA's compliance with the Secretary's program goals, as outlined in the planning guidance provided to the Governor; and

(3) An oversight plan for the SDA which includes: (i) A description of the oversight activities of the PIC and the chief elected official(s), and (ii) the SDA administrative entity's monitoring plan which includes the Governor's monitoring requirements for service providers.

(c) The Governor may also require that the SDA job training plan contain a capacity building and technical assistance strategy that includes plans for designating capacity building as a staff function, assessing local capacity building needs, and developing and participating in computerized communication mechanisms.

(d) The SDA job training plan shall be jointly approved and jointly submitted to the Governor by the PIC and the chief elected official(s) (section 103(d)).

(e) *Modifications.* (1) Any major modification to the SDA job training plan shall be jointly approved and jointly submitted by the PIC and chief elected official(s) of the SDA to the Governor for approval.

(2) For the purposes of this section, the circumstances which constitute a "major" modification shall be specified by the Governor.

§ 628.425 Review and approval.

(a) *Standards and procedures.* The Governor shall establish standards and procedures for the review and approval or disapproval of the SDA job training plan and plan modifications that shall

be provided to the SDA's at the same time as the instructions and schedules for preparation of the plans are provided.

(b) *Plan approval.* Except when the Governor makes a finding under the provisions of section 105(b)(1) of the Act, the Governor shall approve the SDA job training plan or plan modification. The notice of approval shall be provided in writing to the chief elected official(s) and to the private industry council.

§ 628.426 Disapproval or revocation of the plan.

(a) If the Governor disapproves the SDA job training plan or plan modification for any reason, the Governor shall notify the PIC and chief elected official(s) for the SDA in writing as provided in section 105(b)(2) of the Act.

(b) If the Governor disapproves the SDA job training plan or plan modification, the Governor shall provide the PIC and the chief elected official(s) for the SDA 30 days to correct the deficiencies and resubmit the plan or plan modification. Within 15 days after the plan or plan modification is resubmitted, the Governor shall make a final decision and shall notify the PIC and the appropriate chief elected official(s) of the SDA in writing of the final disapproval or approval.

(c) *Governor mediation.* If the PIC and the appropriate chief elected official(s) of an SDA are unable to reach an agreement under the provisions of section 103 (b)(1) or (d) of the Act, any such party may request the Governor to mediate.

(d) *Failure to reach agreement.* If the PIC and the chief elected official(s) fail to reach the required agreements in section 103 (b)(1) or (d) of the Act, funds may not be made available to an SDA under section 104 of the Act and the Governor shall merge the affected area into one or more other existing service delivery areas (section 105(c)(1)).

(e) *Appeals.* (1) In accordance with section 105(b)(2) of the Act, any final disapproval by the Governor of the SDA job training plan or modification may be appealed by the PIC and chief elected official(s) of the SDA to the Secretary.

(2) The Secretary shall not accept an appeal dated later than 30 days after receipt by the PIC and chief elected official(s) of the final disapproval of the SDA job training plan or modification from the Governor.

(3) The Secretary shall accept an appeal under paragraph (e)(1) of this section and shall determine only whether the disapproval is clearly erroneous under section 105(b)(1) of the Act. The Secretary may consider any comments submitted by the Governor. In accordance with section 105(b)(2) of the Act, the Secretary shall make a final decision within 45 days after the appeal is received by the Secretary.

(4) The Secretary shall notify the Governor and the appellant in writing of the Secretary's decision.

(f) *Appeals of plan revocations.* Pursuant to section 164(b)(1) of the Act, a notice of intent to revoke approval of all or part of a plan may be appealed to the Secretary. Such appeals shall be treated as a disapproval under paragraphs (c) and (e) of this section, except that the revocation shall not become effective until the later of:

(1) The time for appeal under paragraph (e) of this section has expired; or

(2) The date on which the Secretary issues a decision affirming the revocation.

(g) In the event that a plan is disapproved and the Governor's decision is upheld upon appeal, the Governor shall merge the affected area into other designated SDA's willing to accept it or include it in another SDA within the State.

§ 628.430 State SDA Submission.

(a) Pursuant to section 105(d) of the Act, when the SDA is the State, the Governor shall submit to the Secretary, not less that 60 days before the beginning of the first of the two program years covered by the job training plan and in accordance with instructions issued by the Secretary, an SDA job training plan covering two program years. When the SDA is the State, modifications to the plan shall be submitted to the Secretary for approval.

(b) When a State submits an SDA job training plan or plan modification pursuant to paragraph (a) of this section, the Secretary shall review the plan or plan modification for overall compliance with the provisions of the Act. The State's plan shall be considered approved unless, within 45 days of receipt of the submission described in paragraph (a) of this section, the Secretary notifies the Governor in writing of inconsistencies between the submission and requirements of specific provisions of the Act. If the plan or plan modification is disapproved, the Governor may appeal the decision by requesting a hearing before an administrative law judge pursuant to subpart H of part 627 of this chapter.

Subpart E—Program Design Requirements for Programs Under Title II of the Job Training Partnership Act

§ 628.500 Scope and purpose.

This subpart contains the regulations pertaining to the program design requirements common to all programs conducted under titles I (i.e., sections 121 and 123) and II of the Act. Regulations specifically pertaining to the Adult Program can be found in subpart F of this part. Regulations pertaining to the Summer Youth Employment and Training Program can be found in subpart G of this part. Regulations pertaining to the Youth Training Program can be found in subpart H of this part.

§ 628.505 Eligibility.

(a) *Eligibility criteria.* (1) Individuals who apply to participate in a program under title II shall be evaluated for eligibility based on age and economic disadvantage. Specific eligibility criteria for programs under title II, parts A, B, and C are described in this part.

(2) Individuals served under title II shall be residents of the SDA, as determined by local government policy, except for the limited exceptions described in the job training plan, including joint programs operated by SDA's (section 141(e)).

(b) *Eligibility documentation.* (1) In order to promote the uniform and standard application of eligibility criteria for participation in the JTPA program, the Department has issued an Eligibility Documentation TAG that provides guidance on acceptable documentation.

(2) *SDA utilization of eligibility guidance.* When it is determined that the SDA or service provider has followed the guidance contained in the Eligibility Documentation TAG, the Grant Officer will not disallow questioned costs related to the required documentation concerning an individual's eligibility.

§ 628.510 Intake, referrals and targeting.

(a) *Collection of personal data.* In addition to determining an applicant's eligibility, the intake process shall include a preliminary review of information relating to whether an applicant is included in one or more of the categories listed in section 203(b) of the Act.

(b) *Information on services.* Upon application, an eligible individual shall be provided information by the SDA or its service providers on the full array of services available through the SDA and its service providers, including

information for women about the opportunities for nontraditional training and employment.

(c) *Assessment during intake.* Some limited assessment activities may be conducted during the intake process in order to determine an eligible applicant's suitability for title II program services. This assessment should be a method, in difficult cases, to finalize determinations for enrollment. The amount of assessment provided during intake is not restricted, however, assessment during intake shall be charged in accordance with § 627.440(d)(3).

(d) *Referral of eligible applicants.* During the intake process, determinations may be made prior to enrollment to refer an eligible applicant to another human service, training or education program deemed more suitable for the individual, including the Job Corps program. In these cases, information on the full array of services available in the SDA may be provided in written form with recommendations and written referrals to other appropriate programs. Copies of or notations of referrals will be maintained as documentation and may be recorded in an incomplete ISS. Further tracking or follow-up of referrals out of title II is not required.

(e) *Referrals from service providers to service delivery areas for additional assessment.* (1) Each service provider shall ensure that an eligible applicant who cannot be served by its particular program shall be referred to the SDA for assessment, as necessary, and suitable referral to other appropriate programs. Each service provider shall also ensure that a participant who cannot be served by its particular program shall be referred to the SDA for further assessment, as necessary, and suitable referral to other appropriate programs, consistent with § 628.515.

(2) Each SDA shall take the appropriate steps (e.g., contract provisions, local administrative issuances, and/or PIC policies) to ensure that its service providers adhere to the provisions of this section and that they maintain documentation of referrals.

(3) Each SDA shall develop an appropriate mechanism to ensure suitability screening for eligible applicants or to apply the provisions of § 628.530 for participants referred by service providers and describe such mechanism in its SDA job training plan.

(f)(1) *"Most in need."* SDA's that satisfy the requirements of sections 203(b) and 263 (b) and (d) pertaining to hard to serve individuals shall be deemed to meet the "most in need" criteria at section 141(a) of the Act.

(2) The requirements referred to in paragraph (h)(1) of this section shall be calculated on the basis of new participants for whom services or training have been provided subsequent to the objective assessment.

(g) The SDA's method of meeting the requirements of sections 203(b) and 263(b) pertaining to hard to serve individuals shall be implemented consistent with the equal opportunity provisions of 29 CFR part 34.

§ 628.515 Objective assessment.

(a) *General.* The requirements of this section shall apply to programs conducted under title I (i.e., sections 121 and 123) and title II, parts A, B, and C.

(b) *Definition.* (1) For purposes of this part, an *objective assessment* means an examination of the capabilities, needs, and vocational potential of a participant and is to be used to develop an individual service strategy and employment goal. Such assessment is customer-centered and a diagnostic evaluation of a participant's employment barriers taking into account the participant's family situation, work history, education, basic and occupational skills, interests, aptitudes (including interests and aptitudes for nontraditional occupations), attitude towards work, motivation, behavior patterns affecting employment potential, financial resources and needs, supportive service needs, and personal employment information as it relates to the local labor market.

(2) For the program under title II–B, the objective assessment shall include an examination of the basic skills and supportive service needs of each participant and may include the other areas listed in paragraph (b)(1) of this section (sections 204(a)(1)(A), 253(c)(1) and 264(b)(1)(A)).

(c) *Methods of objective assessment.* (1) The SDA shall choose the most appropriate means to measure skills, abilities, attitudes, and interests of the participants. The methods used in conducting the objective assessment may include, but are not limited to, structured interviews, paper and pencil tests, performance tests (e.g., skills, and/or work samples, including those that measure interest and capability to train in nontraditional employment), behavioral observations, interest and/or attitude inventories, career guidance instruments, aptitude tests, and basic skills tests.

(2) Instruments used for objective assessment may be developed at the local level; however, any formalized instruments nationally available should be used only for the specific populations for which they are normed.

(d) *Updating of assessments.* Objective assessment should be treated as an ongoing process. As additional relevant information relating to a participant becomes available, it should be reviewed and considered for inclusion in the individual service strategy.

(e) *Other sources of objective assessment.* Other non-JTPA assessments (e.g., through the Job Opportunities and Basic Skills (JOBS) program under title IV of the Social Security Act, or through schools) which have been completed within one year of application for services, and which meet the requirements of this section, may be used to comply with the requirement to assess each participant.

§ 628.520 Individual service strategy.

(a) *General.* The requirements of this section shall apply to programs conducted under title I (i.e., sections 121 and 123) and title II, parts A, B and C.

(b) *Definition.*—(1) Individual service strategy (ISS) means an individual plan for a participant, which shall include an employment goal (including, for women, consideration of nontraditional employment), appropriate achievement objectives, and the appropriate combination of services for the participant based on the objective assessment conducted pursuant to § 628.515 of this part, Objective assessment. In developing the ISS, the participant shall be counseled regarding required loan repayments if the participant chooses to incur personal indebtedness to participate in an education program. The participant shall also be apprised of the requirements for self-sufficiency and the occupational demands within the labor market.

(2) Decisions concerning appropriate services shall be customer-centered, and ensure that the participant is not excluded from training or career options consistent with the provisions of 29 CFR part 34 concerning nondiscrimination and equal opportunity.

(3) For the title II–B program, the ISS may include the components specified in paragraph (b)(1) of this section (sections 204(a)(1)(B), 253(c)(2) and 264(b)(1)(B)). For purposes of titles II–B and II–C, the employment goal may be interpreted broadly and based on long-term career guidance.

(c) *Joint Development of ISS.* The ISS shall be developed in partnership with the participant and reflect the needs indicated by the objective assessment and the expressed interests and desires

of the participant. It is not a formal contract and signatures are not a requirement.

(d) *Review of ISS.* The ISS shall be reviewed periodically to evaluate the progress of each participant in meeting the objectives of the service strategy, including an evaluation of the participant's progress in acquiring basic skills, and occupational skills, as appropriate, and the adequacy of the supportive services provided.

(e) *Provision of services.* If JTPA resources are not sufficient to provide the full range of training or supportive services which might be identified in the ISS, the SDA shall make every reasonable effort to arrange for, through other community resources, basic and occupational skills training and supportive services identified as needed in the ISS for participants under titles II–A and II–C and, in addition, preemployment and work maturity skills training and work experience combined with skills training for participants under title II–C (sections 204(a)(1)(D) and 264(b)(1)(D).

(f) *SDA review of objective assessment and ISS.* (1) The objective assessment and development of the ISS may be conducted by service providers.

(2) The SDA administrative entity shall ensure that development of the ISS and the services provided, respond to the individual needs of the participant and that the combination of services to the participant is indicated by the results of the objective assessment.

(g) *ISS record of decisions.* The ISS shall be used as the basic instrument for the SDA to record the results of decisions made about the combination and sequence of services for the participant based on the objective assessment. Justification for decisions may be referenced but need not be recorded in the ISS. These decisions shall include, but are not limited to, the employment goal and/or career cluster; referrals to other programs for specified activities; the provision and amount of supportive services; and the delivery agents and schedules for training and supportive services activities. The decisions for time and duration of OJT (§ 627.240 of this chapter) shall be briefly recorded in the ISS and may not reference other documents.

(h) The ISS is a customer-centered case management tool and shall not be used as a compliance document.

§ 628.525 Limitations.

Neither eligibility for nor participation in a JTPA program creates an entitlement to services, and nothing in the Act or this part shall be construed to establish a private right of action for a participant to obtain services described in the objective assessment or ISS.

§ 628.530 Referrals of participants to non-title II programs.

(a) When it is determined, through the objective assessment and the ISS, that a participant would be better served by a program other than one under title II (*e.g.*, Job Corps, Vocational Rehabilitation, State or local education, substance abuse treatment center, and/or dislocated worker programs), the participant shall be referred to the appropriate program. Such referral shall be recorded in the ISS.

(b) In cases where there will be a continuing relationship with a participant, a referral to another program(s) for specific services will be part of the participant's title II program strategy and will be recorded in the ISS.

(c) When there will not be a continuing relationship with a participant as the result of a referral to a program other than title II, and an assessment but no training component has been provided, the referral should be recorded in a partial ISS and the individual shall not be counted for purposes of calculating performance against the SDA's performance standards. Further tracking or follow-up of referrals out of title II is not required.

§ 628.535 Limitations on job search assistance.

(a) *General.* Job search assistance is designed to give a participant skills in acquiring full time employment. (See § 626.5 of this chapter, Definitions.)

(b) *Conditions.* Job search activities may be conducted only:

(1) For participants when specified as appropriate in the ISS; and

(2) When delivered in conjunction with other training or educational services designed to increase the participant's ability to acquire employment. Additional services which may be provided in conjunction with job search include the direct training services listed in JTPA section 204(b)(1) of the Act, excluding standalone skill assessment, counseling, work experience and case management and the direct training services listed in 264(b) of the Act excluding tutoring, standalone skill assessment, counseling, work experience and case management. (See § 627.245 of this chapter, "Work Experience," especially § 627.245(d) regarding combination of other services.)

(c) *Exceptions.* (1) Job search assistance activities, including job search skills, training, and job clubs may be provided without the accompanying services specified in paragraph (b) of this section only when:

(i) The objective assessment and the ISS indicate that the additional services are not appropriate; and

(ii) The activities are not available or accessible through other public agencies, including the Employment Service.

(2) The exceptions in paragraph (c)(1) of this section apply to Title II–A and II–B and are not applicable to Title II–C programs (see § 628.804 (d) and (e)).

(d) *Determination of job search availability.* For purposes of this section, a determination of the availability of the job search assistance activity will be made by the SDA, in consultation with the employment service and documented in the local job training plan.

(e) *Older individuals.* For purposes of this section, when an individual aged 55 or older indicates in the assessment a preference for immediate job placement, job search assistance may be provided on a stand-alone basis. The individual's preference shall be recorded in the ISS.

§ 628.540 Volunteer program.

Pursuant to sections 204(c)(6) and 264(d)(7) of the Act, the SDA shall make opportunities available for individuals who have successfully participated in programs under this part to volunteer assistance, in the form of mentoring, tutoring, and other activities.

§ 628.545 Linkages and coordination.

(a) *General requirements.* (1) To the extent practicable, and as permitted by law and regulations, the Governor shall, at the State level, facilitate coordination among the programs set forth at section 205(a) and 265(b) of the Act, including, but not limited to, the establishment of State-level coordination agreements. The Governor may focus coordination through the SJTCC or the HRIC.

(2) The SDA, in conducting programs under this part, shall establish appropriate linkages and coordination procedures with other Federal programs and appropriate State and local educational, social service, and public housing agencies, including with CBO's, business and labor organizations, volunteer groups and others, such as women and older worker organizations, and with appropriate education and training agencies, such as local JOBS programs, Employment Service offices which provide services for JTPA participants, and the local agencies on aging, to avoid duplication and to enhance the delivery of services, which shall be described in the SDA job training plan. Where a local agency declines to complete such a linkage

with an SDA, the SDA shall reflect this information in its job training plan (section 104(b)).

(b) SDA's are encouraged to facilitate effective "one stop shop career centers" and "single point of contact" delivery systems which may include:

(1) The development of individual service strategy plans and of a common program application; and

(2) A unified job development effort and comprehensive programmatic design (sections 104(b) (3) and (4), 205 (a) and (b) and 265).

(c) *Requirements for youth.* For the youth programs under this part, formal agreements shall be established with appropriate local educational agencies which participate in JTPA programs which, at a minimum, shall specify:

(1) The procedures for referring and serving in-school youth;

(2) The methods of assessment of in-school youth; and

(3) Procedures for notifying the SDA when a youth drops out of the school system.

(d) *Schoolwide projects.* (1) In conducting a schoolwide project for low income individuals under sections 263(g) and 265(d) of the Act, the SDA shall establish a cooperative agreement with the appropriate local educational agency.

(2) In addition to the requirements listed in paragraphs (a) and (b) of this section, the cooperative agreement shall include:

(i) A description of the ways in which the JTPA schoolwide project will supplement the educational program of the school;

(ii) Identification of measurable goals to be achieved by the schoolwide project and a provision for assessing the extent to which such goals are met;

(iii) A description of the ways in which the program will use available JTPA and other education program resources;

(iv) A description of the number of individuals to be served by the schoolwide project; and

(v) Assurances that JTPA resources shall be used in coordination with existing sources of funds to supplement and not supplant them (section 107(b)).

(3) In areas where there is more than one local educational agency, cooperative agreements for schoolwide projects are required only with those local education agencies that will participate in programs under schoolwide projects (section 263(g)).

§ 628.550 Transfer of funds.

If described in the job training plan and approved by the Governor:

(a) An amount up to 10 percent of the funds allocated to the SDA under section 202(b) of the Act for title II–A may be transferred to the program under title II–C of the Act;

(b) An amount up to 20 percent of the funds allocated to the SDA under section 252(b) of the Act for title II–B may be transferred to the program under title II–C of the Act; and

(c) An amount up to 10 percent of the funds allocated to the SDA under section 262(b) of the Act for title II–C may be transferred to the program under title II–A of the Act.

Subpart F—The Adult Program

§ 628.600 Scope and purpose.

This subpart contains the regulations for the Adult Program under part A of Title II of the Act. The regulations in part 627 of this chapter and subpart E of this part apply to the Adult Program to the extent that they do not conflict with the provisions of this subpart.

§ 628.605 Eligibility.

(a) *Age and economic disadvantage.* Except as provided in paragraph (b) of this section, an individual shall be eligible to participate under this part only if he or she is economically disadvantaged and 22 years of age or older. There is no maximum age for eligibility.

(b) *Non-economically disadvantaged individuals.* Up to 10 percent of the individuals served under this subpart in each SDA may be individuals who are not economically disadvantaged, if such individuals face serious barriers to employment in accordance with section 203(c) of the Act.

(c) *Requirement to assist hard-to-serve individuals.* (1) Not less than 65 percent of adults who participate in the program under this subpart, including those who are not economically disadvantaged, shall have one or more of the additional barriers to employment as described in section 203(b) of the Act.

(2) The 65 percent barrier requirement in paragraph (c)(1) of this section shall be calculated on the basis of participants for whom services or training have been provided subsequent to an objective assessment on July 1, 1993 or later.

(d) *Addition of barrier.* An SDA may identify and add one additional serious barrier to employment to the categories listed at section 203(b) of the Act, in accordance with the specific procedures and requirements in section 203(d) of the Act.

(e) *Criteria for older workers under joint programs.* (1) The SDA may establish written financial or non-financial agreements with sponsors of programs under title V of the Older Americans Act to carry out joint programs.

(2) Joint programs under this paragraph (e) may include referrals between programs, co-enrollment and provision of services.

(3) Under agreements entered into pursuant to this paragraph (e), individuals eligible under title V of the Older Americans Act shall be deemed to satisfy the requirements of section 203(a)(2) of the JTPA (Older Americans Act, Pub. L. 102–375, section 510).

§ 628.610 Authorized services.

(a) The services that may be provided under this subpart are those described at section 204(b) of the Act.

(b) *Counseling and supportive services.* Counseling and supportive services provided under this subpart may be provided to a participant for a period of up to 1 year after the date on which the participant completes the program.

Subpart G—The Summer Youth Employment and Training Program

§ 628.700 Scope and purpose.

This subpart contains the regulations for the Summer Youth Employment and Training Program (SYETP) under part B of title II of the Act. The regulations in part 627 of this chapter and subpart E of this part apply to the SYETP to the extent that they do not conflict with the provisions of this subpart.

§ 628.701 Program Goals and Objectives.

(a) Each SDA shall establish written goals and objectives that shall be used in evaluating the effectiveness of its SYETP activities. Such goals and objectives may include enhancement of basic educational skills through improvement in school retention or academic performance (including mathematics and reading comprehension); encouragement of school completion or enrollment in supplementary or alternative school programs; improvement of employability skills, including provision of vocational exploration opportunities and exposure to the world of work; enhancement of youth citizenship skills; and demonstrated coordination with other appropriate community organizations.

(b) Each SDA shall ensure that the activities and services offered under the SYETP are consistent with and will contribute to the achievement of the goals and objectives developed pursuant to paragraph (a) of this section.

§ 628.702 Eligibility.

(a) *Age and economic disadvantage.* An individual is eligible to participate

in programs funded under title II-B of the Act, if such individual is

(1) Age 14 through 21; and

(2)(i) Economically disadvantaged; or

(ii) Has been determined to meet the eligibility requirements for free meals under the National School Lunch Act during the most recent school year. *Most recent school year* means the current school year unless the eligibility determination is made during an interim period between school terms, in which case the term means the preceding school year; or

(iii) Is participating in a compensatory education program under Chapter I of title I of the Elementary and Secondary Education Act of 1965; or

(iv) Is participating in a schoolwide project as set forth at section 263(g) of the Act.

(b) *Eligibility determination verification.* The SDA may accept the same documentation utilized by the local educational agency for approving free lunch meals or an assurance by school officials concerning the students' participation in the free school lunch program under the National School Lunch Act.

§ 628.705 SYETP Authorized services.

(a) The services that may be provided under this subpart are those described at section 253 of the Act.

(b) *Basic and remedial education and preemployment and work maturity skills training.* The SDA shall ensure the availability of basic or remedial education and preemployment and work maturity skills training for SYETP participants pursuant to the assessment process described in § 628.515 of this part from funds available to the SDA or by other education and training programs, including, but not limited to, the Job Corps, the JOBS program, youth corps programs or alternative or secondary schools.

(c) *Work experience.* (1) Work experience shall be conducted consistent with the provisions of § 627.245 of this chapter.

(2) Work experience provided under this subpart, to the extent feasible, shall include contextual learning opportunities which integrate the development of general competencies with the development of academic skills.

(d) *Concurrent enrollment.* (1) Youth being served under the SYETP or the Youth Training Program authorized under title II–C of the Act (see subpart H of this part) are not required to be terminated from participation in one program to enroll in the other. The SDA may enroll such youth concurrently in programs under this subpart and subpart H of this part, pursuant to guidance to be issued by the Secretary, in order to promote continuity and coordination of services.

(2) The requirement that not less than 65 percent of the total number of title II–C participants shall have one or more barriers to employment pursuant to section 263(c) and (d) of the Act shall apply to youth who are concurrently enrolled and will participate in the program under title II–C.

(e) *Followup services.* (1) The SDA shall make followup services available for participants if the ISS indicates that such services are appropriate (section 253(d)).

(2) Title II–B funds may be used for such followup services for one year after program participation, which may be concurrent with a period of any subsequent participation in the Title II–C program.

(3) Followup services include the full array of supportive services described in section 4(24) of the Act, except for financial assistance, and may include such followup services as counseling, mentoring, or tutoring.

(f) *Classroom training.* Classroom training provided under this subpart shall, to the extent feasible, include opportunities to apply knowledge and skills relating to academic subjects to the world of work.

(g) *Educational linkages.* (1) In conducting the program assisted under this subpart, service delivery areas shall establish linkages with the appropriate educational agencies responsible for service to participants.

(2) Such linkages shall include arrangements to ensure that there is a regular exchange of information relating to the progress, problems and needs of participants, including the results of assessments of the skill levels of participants.

§ 628.710 Period of program operation.

(a) Except as provided under paragraph (b) of this section, the SYETP shall be conducted during the school vacation period occurring during the summer months.

(b) An SDA operating within the jurisdiction of one or more local educational agencies that operate schools on a year-round full-time basis may offer SYETP activities to participants in such a jurisdiction during the school vacation period(s) treated as the period(s) equivalent to a school summer vacation.

Subpart H—Youth Training Program

§ 628.800 Scope and purpose.

This subpart contains the regulations for the Year-round Youth Program under part C of title II of the Act. The regulations in part 627 of this chapter and subpart E of this part apply to the Year-round Youth program to the extent that they do not conflict with the provisions of this subpart.

§ 628.803 Eligibility.

(a) *Out-of-school youth.* An out of school youth is a youth who does not meet the definition of in-school youth as set forth in paragraph (b) of this section. An out-of-school youth shall be eligible to participate in programs under this subpart, if such individual is:

(1) Age 16 through 21, and

(2) Economically disadvantaged.

(b) *In-school youth. Definition.* In-school youth means a youth who has not yet attained a high school diploma and is attending school full time. An in-school youth shall be eligible to participate in programs under this subpart, if such individual is:

(1)(i) Age 16 through 21, or

(ii) If provided in the job training plan, age 14 through 21 inclusive; and

(2)(i) Economically disadvantaged; or

(ii) Participating in a compensatory education program under Chapter I of title I of the Elementary and Secondary Education Act of 1965; or

(iii) Has been determined to meet the eligibility requirements for free meals under the National School Lunch Act during the most recent school year. *Most recent school year* means the current school year unless the eligibility determination is made during an interim period between school terms, in which case the term means the preceding school year.

(c) *Eligibility determination verification.* The SDA may accept the same documentation utilized by the local educational agency for approving free lunch meals or an assurance by school officials concerning the students' participation in the free school lunch program under the National School Lunch Act. The Department shall provide guidance on this verification separate from these regulations.

(d) *Requirement to serve hard-to-serve individuals.* (1) Not less than 65 percent of the in-school youth who participate in the program under this subpart, including those who are not economically disadvantaged, shall have one or more additional barriers to employment, as described in section 263(b) of the Act.

(2)(i) Not less than 65 percent of the out-of-school youth who participate in the program under this subpart, including those who are not economically disadvantaged, shall have one or more barriers to employment, as described in section 263(d) of the Act,

in addition to any criterion listed in paragraph (b)(2) of this section.

(ii) All Job Corps participants shall be considered out-of-school and as having a barrier to employment.

(3) The requirement of paragraphs (d)(1) and (2) of this section shall be calculated on the basis of participants for whom services or training have been provided subsequent to the objective assessment on July 1, 1993 or later.

(e) *Addition of barrier.* An SDA may identify and add one additional serious barrier to employment to the categories listed at sections 263(b) and (d) of the Act in accordance with the specific procedures and requirements in section 263(h) of the Act.

(f) *Services to non-economically disadvantaged individuals.* Up to 10 percent of the youth served by an SDA under this subpart may be individuals who are not economically disadvantaged, but such individuals shall face one or more serious barriers to employment in accordance with section 263(e) of the Act.

(g) *Eligibility based on schoolwide project participation.* (1) In addition to the individuals who meet the conditions described in § 628.803 of this part, individuals who are not economically disadvantaged may participate in programs under this subpart if they are enrolled in a schoolwide project pursuant to section 263(g) of the Act.

(2) For purposes of paragraph (g)(1) of this section, the term *school* means an individual building, facility, campus or a portion of the school such as the 11th or 12th grade.

(3) A schoolwide project may be operated in a public school located in an urban census tract or non-metropolitan county with a poverty rate of 30 percent or above, and in which 70 percent or more of the students have at least one barrier to employment. The school shall make the determination on whether its students meet the barrier requirements.

(4) The SDA shall determine which will be its schoolwide projects. Examples of schoolwide projects include, but are not limited to, school-to-work programs; college awareness and application assistance programs; school restructuring to make the schools career academies or magnet schools; mentoring programs; business-education compacts; integration of work and learning; year-round extensions of summer STEP programs; community service programs, including linkages with youth service corps; programs to encourage teen parents to stay in school, including establishing child care centers; and work experience slots provided as incentives to stay in school.

(h)(1) *Out-of-school ratio.* Not less than 50 percent of the total title II–C participants in each SDA shall be out-of-school youth (section 263(f)(1) of the Act). The Governor shall be responsible for determining the period for which the 50 percent requirement will be calculated based either on the period covered by the job training plan or on a program year basis.

(2) For purposes of paragraph (h)(1) of this section, a youth who has attained a high school diploma or an equivalency, is habitually truant, as defined by State law, or is attending an alternative school program may be considered out of school. An alternative school program includes an alternative high school, an alternative course of study approved by the local educational agency, or a high school equivalency program. Such programs may be operated either within or outside of the local public school system, and can offer either a high school diploma or equivalency.

(3) *Schoolwide project ratios.* Those in-school participants who are served under a schoolwide project shall not be counted in determining the ratio of in-school to out-of-school youth in paragraph (h)(1) of this section.

§ 628.804 Authorized services.

(a) The SDA and the PIC shall take into consideration exemplary program strategies and services, including those selected for replication pursuant to section 453(c) of the Act concerning capacity building, in the development of services for programs under this subpart.

(b) Except as provided in paragraph (c) of this section, in order to participate in programs under this part an individual who is under the age of 18 and a school dropout, as defined in section 4(38) of the Act, shall enroll in and attend a school, course or program described in section 264(d)(2)(B)(ii) and (iii). An alternative course of study shall be approved by the LEA and may include educational programs provided by community-based organizations.

(c) An individual who is a school dropout, as defined in section 4(38) of the Act, and under the age of 18 may participate in programs under this part without meeting the requirements of paragraph (b) of this section for a limited interim period which may be during the summer months, during periods between school terms, or when a course of study is not immediately available.

(d) The provision of preemployment and work maturity skills training shall be accompanied either by work experience or by other additional services which are designed to increase the basic education or occupational skills of the participant (section 264(d)(3)(A)).

(e) The provision of work experience, job search assistance, job search skills training, and job club activities under programs conducted under this subpart shall be accompanied by other additional services which are designed to increase the basic education or occupational skills of the participant (section 264(d)(3)(B)).

(f) The additional services offered pursuant to paragraphs (d) and (e) of this section may be provided concurrently or sequentially with services provided under other education and training programs (e.g., Job Opportunities and Basic Skills programs under title IV of the Social Security Act, Job Corps (see part 638 of this chapter), or schools).

(g) Schoolwide projects for low-income schools shall meet the conditions in sections 263(g)(1) and (2) of the Act.

(h) Entry employment experience is a training activity which may be conducted in public or private agencies. In all cases, this training activity shall increase or develop the long term employability of eligible in-school and out-of-school youth. Entry employment experiences may include, but are not limited to:

(1) Work experience as described in § 627.245 of this chapter; and

(2) Cooperative education programs that coordinate educational programs with work in the private sector. Subsidized wages are not permitted in cooperative education programs.

(i) Limited internships in the private sector under this subpart shall be designed to enhance the long-term employability of youth.

(1) A limited internship shall be conducted pursuant to an agreement with an employer to provide structured on-site private sector exposure to work and the requirements for successful job retention.

(2) A limited internship should be combined with classroom instruction relating to a particular position, occupation, industry or the basic skills and abilities to successfully compete in the local labor market.

(j)(1) On-the-job (OJT) training activities approved under this subpart shall be consistent with the provisions of subpart B of part 627 of this chapter and shall:

(i) Be for positions that pay the participant a wage that equals or exceeds on the average wage at placement based on the most recent

available data in the SDA for participants under title II–A;

(ii) Be for positions that have career advancement potential; and

(iii) Include a formal, written program of structured job training that will provide the participant with an orderly combination of instruction in work maturity skills, general employment competencies, and occupational specific skills.

(2) In those cases where the OJT participant is a school dropout, the participant shall participate in an education program in accordance with paragraph (b) of this section.

(k) Counseling and supportive services provided under this subpart may be provided to a participant for a period of up to 1 year after the date on which the participant completes the program. These include the full array of supportive services described in section 4(24) of the Act except for financial assistance.

(l) *Year-round operations.* Programs for youth under this subpart shall:

(1) Provide for a year-round education and training program that is coordinated with the appropriate local educational agencies, service providers, and other programs; and

(2) As appropriate, ensure services for youth are available on a multiyear basis, consistent with the determined needs and goals of the youth served.

(3) The year-round program delivery requirement of this paragraph does not prohibit schools on a 9-month operations schedule from providing services for programs under this part.

PART 629—[REMOVED AND RESERVED]

4. Part 629 is removed and reserved.

PART 630—[REMOVED AND RESERVED]

5. Part 630 is removed and reserved.

6. Part 631 is revised to read as follows:

PART 631—PROGRAMS UNDER TITLE III OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—General Provisions

Sec.

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631.2 Definitions.
631.3 Participant eligibility.
631.4 Approved training rule.

Subpart B—Additional Title III Administrative Standards and Procedures

631.11 Allotment and obligation of funds by the Secretary.
631.12 Reallotment of funds by the Secretary.
631.13 Classification of costs at State and substate levels.
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631.15 Federal reporting requirements.
631.16 Complaints, investigations, and penalties.
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Subpart C—Needs-Related Payments

631.20 Needs-related payments.

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631.30 Designation or creation and functions of a State dislocated worker unit or office and rapid response assistance.
631.31 Monitoring and oversight.
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631.34 Designation of substate areas.
631.35 Designation of substate grantees.
631.36 Biennial State plan.
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Subpart E—State Programs

631.40 State program operational plan.
631.41 Allowable State activities.

Subpart F—Substate Programs

631.50 Substate plan.
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361.52 Selection of service providers.
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631.60 General.
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Subpart H—[Reserved]

Subpart I—Disaster Relief Employment Assistance

631.80 Scope and purpose.
631.81 Availability of funds.
631.82 Substate allocation.
631.83 Coordination.
631.84 Allowable projects.
631.85 Participant eligibility.
631.86 Limitations on disaster relief employment.
631.87 Definitions.

Authority: 29 U.S.C. 1579(a); Sec. 6305(f), Pub. L. 100–418, 102 Stat 1107; § 631.30(d)(7) also issued under 29 U.S.C. 2107(a); § 631.37(e) also issued under Sec. 402, Pub. L. 100–689, 102 Stat. 4178–4179 (29 U.S.C. 1751 note).

Subpart A—General Provisions

§ 631.1 Scope and purpose.

This part implements Title III of the Act. Title III programs seek to establish an early readjustment capacity for workers and firms in each State; to provide comprehensive coverage to workers regardless of the cause of dislocation; to provide early referral from the unemployment insurance system to adjustment services as an integral part of the adjustment process; to foster labor, management and community partnerships with government in addressing worker dislocation; to emphasize retraining and reemployment services rather than income support; to create an on-going substate capacity to deliver adjustment services; to tailor services to meet the needs of individuals; to improve accountability by establishing a system of mandated performance standards; to improve financial management by monitoring expenditures and reallotting available funds; and to provide the flexibility to target funds to the most critical dislocation problems.

§ 631.2 Definitions.

In addition to the definitions contained in sections 4, 301, and 303(e) of the Act and Part 626 of this chapter, the following definitions apply to programs under Title III of the Act and this part:

Substantial layoff (for participant eligibility) means any reduction-in-force which is not the result of a plant closing and which results in an employment loss at a single site of employment during any 30 day period for:

(a)(1) At least 33 percent of the employees (excluding employees regularly working less than 20 hours per week); and

(2) At least 50 employees (excluding employees regularly working less than 20 hours per week); or

(b) At least 500 employees (excluding employees regularly working less than 20 hours per week).

Substantial layoff (for rapid response assistance) means any reduction-in-force which is not the result of a plant closing and which results in an employment loss at a single site of employment during any 30 day period for at least 50 employees (excluding employees regularly working less than 20 hours per week) (section 314(b)(4)).

§ 631.3 Participant eligibility.

(a) Eligible dislocated workers, as defined in section 301 of the Act, may participate in programs under this part. For the purposes of determining eligibility under section 301(a)(1)(A) of

the Act, the term "eligible for" unemployment compensation includes any individual whose wages from employment would be considered in determining eligibility for unemployment compensation under Federal or State unemployment compensation laws.

(b)(1) Except as provided in paragraph (b)(3) of this section, workers who have not received an individual notice of termination but who are employed at a facility for which the employer has made a public announcement of planned closure shall be considered eligible dislocated workers with respect to the provision of basic readjustment services specifically identified in section 314(c) of the Act with the exception of supportive services and relocation assistance.

(2) Individuals identified in paragraph (b)(1) of this section shall be eligible to receive all services authorized in sections 314 of the Act after a date which is 180 days prior to the scheduled closure date of the facility, subject to the provisions of § 631.20 of this part and other applicable provisions regarding receipt of supportive services.

(3) Paragraphs (b)(1) and (b)(2) of this section shall not apply to individuals who are likely to remain employed with the employer or to retire instead of seeking new employment.

(4) For the purposes of paragraph (b)(1) of this section, the Governor shall establish criteria for defining *public announcement*. Such criteria shall include provisions that the public announcement shall be made by the employer and shall indicate a planned closure date for the facility (section 314(h)).

(c) Eligible dislocated workers include individuals who were self-employed (including farmers and ranchers) and are unemployed:

(1) Because of natural disasters, subject to the provisions of paragraph (e) of this section; or

(2) As a result of general economic conditions in the community in which they reside.

(d) For the purposes of paragraph (c) of this section, categories of economic conditions resulting in the dislocation of a self-employed individual may include, but are not limited to:

(1) Failure of one or more businesses to which the self-employed individual supplied a substantial proportion of products or services;

(2) Failure of one or more businesses from which the self-employed individual obtained a substantial proportion of products or services;

(3) Substantial layoff(s) from, or permanent closure(s) of, one or more plants or facilities that support a significant portion of the State or local economy.

(e) The Governor is authorized to establish procedures to determine the eligibility to participate in programs under this part of the following categories of individuals:

(1) Self-employed farmers, ranchers, professionals, independent tradespeople and other business persons formerly self-employed but presently unemployed.

(2) Self-employed individuals designated in paragraph (d)(1) of this section who are in the process of going out of business, if the Governor determines that the farm, ranch, or business operations are likely to terminate.

(3) Family members and farm or ranch hands of individuals identified under paragraphs (d)(1) and (2) of this section, to the extent that their contribution to the farm, ranch, or business meets minimum requirements as established by the Governor.

(f) The Governor is authorized to establish procedures to identify individuals permanently dislocated from their occupations or fields of work, including self-employment, because of natural disasters. For the purposes of this paragraph (f), categories of natural disasters include, but are not limited to, any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, drought, fire, or explosion.

(g) The State may provide services to displaced homemakers (as defined in section 4 of the Act) under this part only if the Governor determines that such services may be provided without adversely affecting the delivery of such services to eligible dislocated workers (section 311(b)(4)).

(h) An eligible dislocated worker issued a certificate of continuing eligibility, as provided in § 631.53 of this part, shall remain eligible for assistance under this part for the period specified in the certificate, not to exceed 104 weeks. The 45-day enrollment provisions described in subpart B of part 627 of this chapter shall be waived for eligible individuals who possess a valid certificate under this paragraph and it is not required that a new application be taken prior to participation.

(i) An eligible dislocated worker who does not possess a valid certificate shall remain eligible if such individual:

(1) Remains unemployed, or

(2) Accepts temporary employment for the purpose of income maintenance prior to and/or during participation in a training program under this part with the intention of ending such temporary employment at the completion of the training and entry into permanent unsubsidized employment as a result of the training. Such temporary employment must be with an employer other than that from which the individual was dislocated. This provision applies to eligible individuals both prior to and subsequent to enrollment.

(j) The Governor shall ensure that rapid response and basic readjustment services under Title III of JTPA are made available to workers who, under the NAFTA Worker Security Act (Pub. L. 103–182), are members of a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) for which the Governor has made a finding that (1) the sales or production, or both, of such firm or subdivision have decreased absolutely, and (2) imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased; or (3) there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles which are produced by the firm or subdivision.

§ 631.4 Approved training rule.

An eligible dislocated worker who is participating in any retraining activity, except on-the-job training, under Title III of the Act or this part shall be deemed to be in training with the approval of the State agency for purposes of section 3304(a)(8) of the Internal Revenue Code of 1986. Participation in the approved training shall not disqualify the individual from receipt of unemployment benefits to which the individual is otherwise entitled (section 314(f)(2)).

Subpart B—Additional Title III Administrative Standards and Procedures

§ 631.11 Allotment and obligation of funds by the Secretary.

(a) Funds shall be allotted among the various States in accordance with section 302(b)(1) of the Act, subject to paragraph (b) of this section.

(b) Funds shall be allotted among the various States in accordance with section 302(b)(2)(A) and (B) of the Act as soon as satisfactory data are available under section 462(e) of the Act.

(c) Allotments for the Commonwealth of the Northern Mariana Islands and other territories and possessions of the United States shall be made by the

Secretary in accordance with the provisions of section 302(e) of the Act.

§ 631.12 Reallotment of funds by the Secretary.

(a) Based upon reports submitted by States pursuant to § 631.15 of this part, the Secretary shall make determinations regarding total expenditures of funds within the State with reference to the amount required to be reallotted pursuant to section 303(b) of the Act. For purposes of this paragraph (a)—

(1) The funds to be reallotted will be an amount equal to the sum of:

(i) Unexpended funds in excess of 20 percent of the prior program year's formula allotment to the State, and

(ii) All unexpended funds from the formula allotment for the program year preceding the prior program year.

(2)(i) The current program year is the year in which the determination is made; and

(ii) The prior program year is the year immediately preceding the current program year.

(3) Unexpended funds shall mean the remainder of the total funds made available by formula that were available to the State for the prior program year minus total accrued expenditures at the end of the prior program year.

(4) Reallotted funds will be made available from current year allotments made available by formula.

(b) Based upon the most current and satisfactory data available, the Secretary shall identify eligible States, pursuant to the definitions in section 303(e) of the Act.

(c) The Secretary shall recapture funds from States identified in paragraph (a) of this section and reallot and reobligate such funds by a Notice of Obligation (NOO) adjustment to current year funds to eligible States as identified in paragraph (b) of this section, as set forth in section 303(a), (b), and (c) of the Act.

(d) Reallotted funds shall be subject to allocation pursuant to § 631.32 of this part, and to the cost limitations at § 631.14 of this part.

§ 631.13 Classification of costs at State and substate levels.

(a)(1) Allowable costs under Title III shall be planned, controlled, and charged by either the State or the substate grantee against the following cost categories: rapid response services, basic readjustment services, retraining services, needs-related payments and supportive services, and administration. Costs shall be reported to the Secretary of Labor in accordance with the reporting requirements established pursuant to § 631.15 of this part.

(2) All costs shall be allocable to a particular cost category to the extent that benefits are received by such category; and no costs shall be chargeable to a cost category except to the extent that benefits are received by such category.

(b) Rapid response services shall include the cost of rapid response activities identified at section 314(b) of the Act.

(1) Staff salary and benefit costs are chargeable to the rapid response services cost category only for that portion of staff time actually spent on rapid response activities.

(2) All other costs are chargeable to the rapid response services cost category only to the extent that they are for rapid response purposes.

(c) Basic readjustment services shall include the cost of basic readjustment services identified at section 314(c) of the Act, except that the cost of supportive services under section 314(c)(15) of the Act shall be charged to the needs-related payments and supportive services cost category, as provided in paragraph (e) of this section.

(d) Retraining services shall include the cost of retraining services identified at section 314(d) of the Act.

(e) Needs-related payments and supportive services shall include the cost of needs-related payments identified in section 314(e) of the Act, and supportive services identified in section 4(24) of the Act and provided for in section 314(c)(15) of the Act.

(f)(1) Administration shall include the costs incurred by recipients and subrecipients in the administration of programs under Title III of the Act, and shall be that portion of necessary and allowable costs which is not directly related to the provision of services and otherwise allocable to the cost categories in paragraphs (b) through (e) of this section. The description of administrative costs in subpart D of part 627 of this chapter shall be used by States and substate grantees as guidance in charging administration costs to Title III programs.

(2) Administration does not include the costs of activities under section 314(b) of the Act and which are provided for in paragraph (b) of this section.

(3) Administration shall include Title III funds used for coordination of worker adjustment programs with the Federal-State unemployment compensation system and with Chapter 2 of Title II of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) and part 617 of this chapter (sections 311(b)(10) and 314(f)).

§ 631.14 Limitations on certain costs.

(a) *Retraining services.* Of the funds allocated to a substate grantee under part A of Title III for any program year, not less than 50 percent shall be expended for retraining services specified under section 314(d) of the Act, unless a waiver of this requirement is granted by the Governor. The Governor shall prescribe criteria that will allow substate grantees to apply in advance for a waiver of this requirement, pursuant to section 315(a)(2) of the Act. The Governor shall prescribe the time and form for the submission of an application for such a waiver, as provided for at section 315(a)(3) of the Act. The Governor shall not grant a waiver that allows less than 30 percent of the funds expended by a substate grantee to be expended for retraining activities.

(b) *Needs-related payments and supportive services.* Of the funds allocated to the Governor, or allocated to any substate grantee, under part A of Title III for any program year, not more than 25 percent may be expended to provide needs-related payments and other supportive services.

(c) *Administrative cost.* Of the funds allocated to the Governor, or allocated to any substate grantee, under part A of Title III for any program year, not more than 15 percent may be expended to cover the administrative cost of programs.

(d) Reallotted funds are subject to the cost limitations in paragraphs (a), (b) and (c) of this section.

(e) Funds allocated (or distributed) to substate areas under the provisions of section 302(c)(1)(E) of the Act shall be considered funds allocated to a substate grantee for the program year of the funds' initial allotment to the State, and included in the cost limitations in paragraphs (a), (b) and (c) of this section.

(f) Funds reserved by the Governor under the provisions of Section 302(c)(1) of the Act, other than funds distributed to substate grantees under the provisions of JTPA section 302(c)(1)(E), shall be considered funds allocated to the Governor for the program year of the funds' initial allotment to the State and included in the cost limitations applicable to the Governor.

(g) States and substate grantees shall have the full period of time that the funds are available to them to comply with the cost limitations described in JTPA section 315 and paragraphs (a), (b), and (c) of this section.

(h) *Combination of funds.* (1) Substate grantees within a State may combine funds allocated under part A of Title III

for provision of services to eligible dislocated workers from two or more substate areas. Funds contributed by the substate grantees under this section remain subject to the cost limitations which apply to each substate grantee's total allocation (section 315(d)).

(2) To combine funds under this provision, substate grantees must be in contiguous substate areas or part of the same labor market area.

(i) For the purposes of this section:

(1) *Allotment to the State* means allotted by the formula described in section 302(b) of the Act, as adjusted by reallotments among the States, in accordance with section 303 of the Act. For purposes of determining availability and of applying cost limitations, funds will retain the identity of the program year in which they were initially allotted to a State, irrespective of subsequent reallotments.

(2) *Allocated to the substate grantee* means allocated by the formula prescribed by the Governor under section 302(b) of the Act, and allocated (or distributed) under the provisions of section 302(c)(1)(E), as adjusted by within State reallocations implemented by the Governor through procedures established pursuant to section 303(d) of the Act. For purposes of determining availability and of applying cost limitations, funds will retain the identity of the program year in which they were initially allotted to the State.

(3) *Allocated to the Governor* refers to funds reserved by the Governor for use in accordance with the provisions of section 302(c)(1) of the Act, exclusive of any such funds which are distributed or allocated to substate grantees pursuant to section 302(c)(1)(E).

(j) The cost limitations described in this section do not apply to any designated substate grantee which served as a concentrated employment program grantee for a rural area under the Comprehensive Employment and Training Act (section 108(d)).

§ 631.15 Federal reporting requirements.

Notwithstanding the requirements in subpart D of part 627 of this chapter, the Governor shall report to the Secretary pursuant to instructions issued by the Secretary for programs and activities funded under this part. Such reports shall include a cost breakdown of all funds made available under this part used by the State Dislocated Worker Unit for administrative expenditures. Reports shall be provided to the Secretary within 45 calendar days after the end of the report period (sections 165(a)(2) and 311(b)(11)).

§ 631.16 Complaints, investigations, and penalties.

The provisions of this section apply in addition to the sanctions provisions in subpart G of part 627 of this chapter.

(a) The Secretary shall investigate a complaint or report received from an aggrieved party or a public official which alleges that a State is not complying with the provisions of the State plan required under section 311(a) of the Act (section 311(e)(1)).

(b) Where the Secretary determines that a State has failed to comply with its State plan, and that other remedies under the Act and part 627 of this chapter are not available or are not adequate to achieve compliance, the Secretary may withhold an amount not to exceed 10 percent of the allotment to the State for the program year in which the determination is made for each such violation (section 311(e)(2)(A)).

(c) The Secretary will not impose the penalty provided for under paragraph (b) of this section until all other remedies under the Act and part 627 of this chapter for achieving compliance have been exhausted or are determined to be unavailable or inadequate to achieve State compliance with the terms of the State plan.

(d) The Secretary will make no determination under this section until the affected State has been afforded adequate written notice and an opportunity to request and to receive a hearing before an administrative law judge pursuant to the provisions of subpart H of part 627 of this chapter (section 311(e)(2)(B)).

§ 631.17 Federal monitoring and oversight.

The Secretary shall conduct oversight of State administration of programs under this part, including the administration by each State of the rapid response assistance services provided in such State. The Secretary shall take the appropriate actions to ensure the effectiveness, efficiency and timeliness of services conducted by the State in accordance with § 631.30(b) of this part (section 314(b)(3)).

§ 631.18 Federal by-pass authority.

(a) In the event that a State fails to submit a biennial State plan that is approved under § 631.36 of this part, the Secretary shall make arrangements to use the amount that would be allotted to that State for the delivery in that State of the programs, activities, and services authorized under Title III of the Act and this part.

(b) No determination may be made by the Secretary under this section until the affected State is afforded written notification of the Secretary's intent to exercise by-pass authority and an opportunity to request and to receive a hearing before an administrative law judge pursuant to the provisions of subpart H of part 627 of this chapter.

(c) The Secretary will exercise by-pass authority only until such time as the affected State has an approved plan under the provisions of § 631.36 of this part (section 321(b)).

§ 631.19 Appeals.

Except as provided in this part, disputes arising in programs under this part shall be adjudicated under the appropriate State or local grievance procedures required by subpart E of part 627 of this chapter or other applicable law. Complaints alleging violations of the Act or this part may be filed with the Secretary, pursuant to subpart F of part 627 of this chapter. Paragraphs (a) through (e) of this section refer to appeal rights set forth in this part.

(a) Section 628.405(g) of this chapter (appeals of denial of SDA designation) shall apply to denial of substate area designations under § 631.34(c)(1) and (3) of this part.

(b) Section 628.426(e) of this chapter (appeals of final disapproval of SDA job training plans or modifications) shall apply to final disapproval of substate plans under § 631.50(f) of this part.

(c) Section 628.426(f) of this chapter (appeals of a Governor's notice of intent to revoke approval of all or part of a plan) shall apply to a Governor's notice of intent to exercise by-pass authority under § 631.38 of this part.

(d) Section 628.430(b) of this chapter (appeals of the Secretary's disapproval of a plan when the SDA is the State) shall apply to plan disapproval when the substate area is the State, as set forth in § 631.50(g) and (h) of this part.

(e) Decisions pertaining to designations of substate grantees under § 631.35 of this part are not appealable to the Secretary.

Subpart C—Needs-related payments

§ 631.20 Needs-related payments.

(a) Title III funds available to States and substate grantees may be used to provide needs-related payments to participants in accordance with the approved State or substate plan, as appropriate.

(b) In accordance with the approved substate plan, needs-related payments shall be provided to an eligible dislocated worker only in order to enable such worker to participate in training or education programs under this part. To be eligible for needs-related payments:

(1) An eligible worker who has ceased to qualify for unemployment

compensation must have been enrolled in a training or education program by the end of the thirteenth week of the worker's initial unemployment compensation benefit period, or, if later, by the end of the eighth week after an employee is informed that a short-term layoff will in fact exceed 6 months.

(2) For purposes of paragraph (b)(1) of this section, the term *enrolled in a training or education program* means that the worker's application for training has been approved and the training institution has furnished written notice that the worker has been accepted in the approved training program beginning within 30 calendar days.

(3) An eligible worker who does not qualify for unemployment compensation must be participating in a training or education program (section 314(e)(1)).

(c) Needs-related payments shall not be provided to any participant for the period that such individual is employed, enrolled in, or receiving on-the-job training, out-of-area job search, or basic readjustment services in programs under the Act, nor to any participant receiving trade readjustment allowances, on-the-job training, out-of-area job search allowances, or relocation allowances under Chapter 2 of Title II of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) or part 617 of this chapter (section 314(e)(1)).

(d) The level of needs-related payments to an eligible dislocated worker in programs under this part shall not exceed the higher of:

(1) The applicable level of unemployment compensation; or

(2) The poverty level (as by the published by the Secretary of Health and Human Services) (section 314(e)(2)).

Subpart D—State Administration

§ 631.30 Designation or creation and functions of a State dislocated worker unit or office, and rapid response assistance.

(a) *Designation or creation of State dislocated worker unit or office.* The State shall designate or create an identifiable State dislocated worker unit or office with the capabilities and functions identified in paragraph (b) of this section. Such unit or office may be an existing organization or new organization formed for this purpose (section 311(b)(2)). The State dislocated worker unit or office shall:

(1) Make appropriate retraining and basic adjustment services available to eligible dislocated workers through substate grantees, and in statewide, regional or industrywide projects;

(2) Work with employers and labor organizations in promoting labor-management cooperation to achieve the goals of this part;

(3) Operate a monitoring, reporting, and management system to provide adequate information for effective program management, review, and evaluation;

(4) Provide technical assistance and advice to substate grantees;

(5) Exchange information and coordinate programs with the appropriate economic development agency, State education and training and social services programs;

(6) Coordinate with the unemployment insurance system, the Federal-State Employment Service system, the Trade Adjustment Assistance program and other programs under this chapter;

(7) Receive advance notice of plant closings and mass layoffs as provided at section 3(a)(2) of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102(a)(2) and part 639 of this chapter);

(8) Immediately notify (within 48 hours) the appropriate substate grantees following receipt of an employer notice of layoff or plant closing or of any other information that indicates a projected layoff or plant closing by an employer in the grantee's substate area, in order to continue and expand the services initiated by the rapid response team (section 311(b)(3)(D));

(9) Fully consult with labor organizations where substantial numbers of their members are to be served; and

(10) Disseminate throughout the State information on the availability of services and activities under Title III of the Act and this part.

(b) *Rapid response capability.* The dislocated worker unit shall have one or more rapid response specialists, and the capability to provide rapid response assistance, on-site, for dislocation events such as permanent closures and substantial layoffs throughout the State. The State shall not transfer the responsibility for the rapid response assistance functions of the State dislocated worker unit to another entity, but the State may contract with another entity to perform rapid response assistance services. Nothing in this paragraph shall remove or diminish the dislocated worker unit's accountability for ensuring the effective delivery of rapid response assistance services throughout the State (section 311(b)(12)).

(1) State rapid response specialists should be knowledgeable about the resources available through programs under this part and all other appropriate resources available through public and private sources to assist dislocated workers. The expertise required by this part includes knowledge of the Federal, State, and local training and employment systems; labor-management relations and collective bargaining activities; private industry and labor market trends; programs and services available to veterans; and other fields necessary to carry out the rapid response requirements of the Act.

(2) The rapid response specialists should have:

(i) The ability to organize a broad-based response to a dislocation event, including the ability to coordinate services provided under this part with other State-administered programs available to assist dislocated workers, and the ability to involve the substate grantee and local service providers in the assistance effort;

(ii) The authority to provide limited amounts of immediate financial assistance for rapid response activities, including, where appropriate, financial assistance to labor-management committees formed under paragraph (c)(2) of this section;

(iii) Credibility among employers and in the employer community in order to effectively work with employers in difficult situations; and

(iv) Credibility among employee groups and in the labor community, including organized labor, in order to effectively work with employees in difficult situations.

(3) The dissemination of information on the State dislocated worker unit's services and activities should include efforts to ensure that major employers, organized labor, and groups of employees not represented by organized labor, are aware of the availability of rapid response assistance. The State dislocated worker unit should make equal effort in responding to dislocation events without regard to whether the affected workers are represented by a union.

(4) In a situation involving an impending permanent closure or substantial layoff, a State may provide funds, where other public or private resources are not expeditiously available, for a preliminary assessment of the advisability of conducting a comprehensive study exploring the feasibility of having a company or group, including the workers, purchase the plant and continue it in operation.

(5) Rapid response specialists may use funds available under this part:

(i) To establish on-site contact with employer and employee representatives within a short period of time (preferably 48 hours or less) after becoming aware of a current or projected permanent

closure or substantial layoff in order to—

(A) Provide information on and facilitate access to available public programs and services; and

(B) Provide emergency assistance adapted to the particular permanent closure or substantial layoff; such emergency assistance may include financial assistance for appropriate rapid response activities, such as arranging for the provision of early intervention services and other appropriate forms of immediate assistance in response to the dislocation event;

(ii) To promote the formation of labor-management committees as provided for in paragraph (c) of this section, by providing:

(A) Immediate assistance in the establishment of the labor-management committee, including providing immediate financial assistance to cover the start-up costs of the committee;

(B) A list of individuals from which the chairperson of the committee may be selected;

(C) Technical advice as well as information on sources of assistance, and liaison with other public and private services and programs; and

(D) Assistance in the selection of worker representatives in the event no union is present;

(iii) To provide ongoing assistance to labor-management committees described in paragraph (c) of this section by:

(A) Maintaining ongoing contact with such committees, either directly or through the committee chairperson;

(B) Attending meetings of such committees on an *ex officio* basis; and

(C) Ensuring ongoing liaison between the committee and locally available resources for addressing the dislocation, including the establishment of linkages with the substate grantee or with the service provider designated by the substate grantee to act in such capacity;

(iv) To collect information related to:

(A) Economic dislocation (including potential closings or layoffs); and

(B) All available resources within the State for serving displaced workers, which information shall be made available on a regular basis to the Governor and the State Council to assist in providing an adequate information base for effective program management, review, and evaluation;

(v) To provide or obtain appropriate financial and technical advice and liaison with economic development agencies and other organizations to assist in efforts to avert worker dislocations;

(vi) To disseminate information throughout the State on the availability of services and activities carried out by the dislocated worker unit or office; and

(vii) To assist the local community in developing its own coordinated response and in obtaining access to State economic development assistance.

(6) Notwithstanding the definition of "substantial layoff (for rapid response assistance)" at § 631.2 of this part;

(i) The Governor shall provide rapid response and basic readjustment services to members of a group of workers under the NAFTA Worker Security Act for which the Governor has made a finding under § 631.3(j); and

(ii) The Governor may, under exceptional circumstances, authorize rapid response assistance provided by a State dislocated worker unit when the layoff is less than 50 or more individuals, is not at a single site of employment, or does not take place during a single 30 day period. For purposes of this provision, *exceptional circumstances* include those situations which would have a major impact upon the community(ies) in which they occur (section 314(b)).

(c) *Labor-management committees.* As provided in sections 301(b)(1) and 314(b)(1)(B) of the Act, labor-management committees are a form of rapid response assistance which may be voluntarily established to respond to actual or prospective worker dislocation.

(1) Labor management committees ordinarily include (but are not limited to) the following:

(i) Shared and equal participation by workers and management, with members often selected in an informal fashion;

(ii) Shared financial participation between the company and the State, using funds provided under Title III of the Act, in paying for the operating expenses of the committee; in some instances, labor union funds may help to pay committee expenses;

(iii) A chairperson, to oversee and guide the activities of the committee who—

(A) Shall be jointly selected by the labor and management members of the committee;

(B) Is not employed by or under contract with labor or management at the site; and

(C) Shall provide advice and leadership to the committee and prepare a report on its activities;

(iv) The ability to respond flexibly to the needs of affected workers by devising and implementing a strategy for assessing the employment and training needs of each dislocated worker and for obtaining the services and assistance necessary to meet those needs;

(v) A formal agreement, terminable at will by the workers or the company management, and terminable for cause by the Governor; and

(vi) Local job identification activities by the chairperson and members of the committee on behalf of the affected workers.

(2) Because they include employee representatives, labor-management committees typically provide a channel whereby the needs of eligible dislocated workers can be assessed, and programs of assistance developed and implemented, in an atmosphere supportive to each affected worker. As such, committees must be perceived to be representative and fair in order to be most effective.

§ 631.31 Monitoring and oversight.

The Governor is responsible for monitoring and oversight of all State and substate grantee activities under this part. In such monitoring and oversight of substate grantees, the Governor shall ensure that expenditures and activities are in accordance with the substate plan or modification thereof, and with the cost limitations described in § 631.14 of this part.

§ 631.32 Allocation of funds by the Governor.

Of the funds allotted to the Governor by the Secretary under § § 631.11 and 631.12 of this part:

(a) The Governor shall issue allocations to substate grantees, the sum of which shall be no less than 50 percent of the State's allotment (section 302(d)).

(b)(1) The Governor shall prescribe the formula to be used in issuing substate allocations required under paragraph (a) of this section to substate grantees.

(2) The formula prescribed pursuant to paragraph (b)(1) of this section shall utilize the most appropriate information available to the Governor. In prescribing the formula, the Governor shall include (but need not be limited to) the following information:

(i) Insured unemployment data;

(ii) Unemployment concentrations;

(iii) Plant closing and mass layoff data;

(iv) Declining industries data;

(v) Farmer-rancher economic hardship data; and

(vi) Long-term unemployment data.

(3) The Governor may allow for an appropriate weight for each of the formula factors set forth in paragraph (b)(2) of this section. A weight of zero for any of the factors required in section

302(d) of the Act and identified in paragraph (b)(2) of this section shall only be made when a review of available data indicates that the factor is not relevant to determining the incidence of need for worker dislocation assistance within the State. The formula may be amended no more frequently than once each program year (section 302(d)).

(c) The Governor may reserve an amount equal to not more than 40 percent of the funds allotted to the State under § 631.11 and § 631.12 of this part for State activities and for discretionary allocations to substate grantees (section 302(c)(1)).

(d) The Governor may reserve an additional amount equal to not more than 10 percent of the funds allotted to the State under § 631.11 of this part. The Governor shall allocate such funds, subject to the SJTCC or HRIC review and comment, during the first three quarters of the program year among substate grantees on the basis of need. Such funds shall be allocated to substate grantees and shall not be used for statewide activities. Such funds shall be included in each substate grantee's allocation for purposes of cost limitations, as described in § 631.14 of this part (sections 302(c)(2) and 317(1)(B)).

§ 631.33 State procedures for identifying funds subject to mandatory Federal reallotment.

The Governor shall establish procedures to assure the equitable identification of funds required to be reallotted pursuant to section 303(b) of the Act. Funds so identified may be funds reserved by the State pursuant to section 302(c)(1)(A) through (D) of the Act and/or allocated to substate grantees pursuant to section 302(c)(1)(E), (c)(2) and/or (d) of the Act (section 303(d)). Such procedures may not exempt either State or substate funds from reallotment.

§ 631.34 Designation of substate areas.

(a) The Governor, after receiving recommendations from the SJTCC or HRIC, shall designate substate areas for the State (section 312(a)).

(b) In designating substate areas, the Governor shall:

(1) Ensure that each service delivery area within the State is included within a substate area and that no SDA is divided among two or more substate areas; and

(2) Consider the availability of services throughout the State, the capability to coordinate the delivery of services with other human services and economic development programs, and the geographic boundaries of labor market areas within the State.

(c) Subject to paragraph (b) of this section, the Governor shall designate as a substate area:

(1) Any single SDA that has a population of 200,000 or more;

(2) Any two or more contiguous SDA's that:

(i) In the aggregate have a population of 200,000 or more; and

(ii) Request such designation; and

(3) Any concentrated employment program grantee for a rural area as described in section 101(a)(4)(A)(iii) of the Act.

(d) In addition to the entities identified in paragraph (c) of this section, the Governor may, without regard to the 200,000 population requirement, designate SDAs with smaller populations as substate areas.

(e) The Governor may deny a request for substate area designation from a consortium of two or more SDAs that meets the requirements of paragraph (c)(2) of this section only upon a determination that the request is not consistent with the effective delivery of services to eligible dislocated workers in the relevant labor market area, or would otherwise not be appropriate to carry out the purposes of title III. The Governor will give good faith consideration to all such requests by a consortium of SDAs to be a substate area. In denying a consortium's request for substate area designation, the Governor shall set forth the basis and rationale for the denial (section 312(a)(5)).

(f) In the case where the service delivery area is the State, the entire State shall be designated as a single substate area.

(g)(1) Entities described in paragraphs (c)(1) and (3) of this section may appeal the Governor's denial of substate area designation to the Secretary of Labor. The procedures that apply to such appeals shall be those set forth at § 628.405(g) for appeals of the Governor's denial of SDA designation.

(2) An entity described in paragraph (c)(2) of this section that has been denied substate area designation may utilize the State-level grievance procedures required by section 144(a) of the Act and subpart E of part 627 of this chapter for the resolution of disputes arising from such a denial.

(h) Designation of substate areas shall not be revised more frequently than once every two years. All such designations must be completed no later than four months prior to the beginning of any program year (section 312(a)(6)).

§ 631.35 Designation of substate grantees.

The Governor may establish procedures for the designation of substate grantees.

(a) Designation of the substate grantee for each substate area shall be made on a biennial basis.

(b) Entities eligible for designation as substate grantees include:

(1) Private industry councils in the substate area;

(2) Service delivery area grant recipients or administrative entities designated under Title II of the Act;

(3) Private non-profit organizations;

(4) Units of general local government in the substate area, or agencies thereof;

(5) Local offices of State agencies; and

(6) Other public agencies, such as community colleges and area vocational schools.

(c) Substate grantees shall be designated in accordance with an agreement among the Governor, the local elected official or officials of such area, and the private industry council or councils of such area. Whenever a substate area is represented by more than one such official or council, the respective officials and councils shall each designate representatives, in accordance with procedures established by the Governor (after consultation with the SJTCC or HRIC), to negotiate such agreement.

(d) The agreement specified in paragraph (c) of this section shall set forth the conditions, considerations, and other factors related to the selection of substate grantees in accordance with section 312(b) of the Act.

(e) The Governor shall negotiate in good faith with the parties identified in paragraph (c) of this section and shall make a good faith effort to reach agreement. In the event agreement cannot be reached on the selection of a substate grantee, the Governor shall select the substate grantee.

(f) Decisions under paragraphs (c), (d), and (e) of this section are not appealable to the Secretary (section 312(b) and (c)).

§ 631.36 Biennial State plan.

(a) In order to receive an allotment of funds under §§ 631.11 and 631.12 of this part, the State shall submit to the Secretary, in accordance with instructions issued by the Secretary, on a biennial basis, a biennial State plan (section 311). Such plan shall include:

(1) Assurances that—

(i) The State will comply with the requirements of Title III of the Act and this part;

(ii) Services will be provided only to eligible displaced workers, except as provided in paragraph (a)(2) of this section;

(iii) Services will not be denied on the basis of State of residence to eligible dislocated workers displaced by a permanent closure or substantial layoff within the State; and may be provided to other eligible dislocated workers regardless of the State of residence of such workers;

(2) Provision that the State will provide services under this part to displaced homemakers only if the Governor determines that the services may be provided to such workers without adversely affecting the delivery of services to eligible dislocated workers;

(3) A description of the substate allotment and reallotment procedures and assurance that they meet the requirements of the Act and this part;

(4) A description of the State procurement system and procedures to be used under Title III of the Act and this part which are consistent with the provisions in subpart D of part 627 of this chapter; and

(5) Assurance that the State will not prescribe any performance standard which is inconsistent with § 627.470 of this chapter.

(b) The State biennial plan shall be submitted to the Secretary on or before the May 1 immediately preceding the first of the two program years for which the funds are to be made available.

(c) Any plan submitted under paragraph (a) of this section may be modified to describe changes in or additions to the programs and activities set forth in the plan. No plan modification shall be effective unless reviewed pursuant to paragraph (d) of this section and approved pursuant to paragraph (e) of this section.

(d) The Secretary shall review State biennial plans and plan modifications, including any comments thereon submitted by the SJTCC or HRIC, for overall compliance with the provisions of the Act, this part, and the instructions issued by the Secretary.

(e) A State biennial plan or plan modification is submitted on the date of its receipt by the Secretary. The Secretary shall approve a plan or plan modification within 45 days of submission unless, within 30 days of submission, the Secretary notifies the Governor in writing of any deficiencies in such plan or plan modification.

(f) The Secretary shall not finally disapprove the State biennial plan or plan modification of any State except after written notice and an opportunity to request and to receive a hearing before an administrative law judge pursuant to the provisions of subpart H of part 627 of this chapter.

§ 631.37 Coordination activities.

(a) Services under this part shall be integrated or coordinated with services and payments made available under Chapter 2 of Title II of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) and part 617 of this chapter and programs provided by any State or local agencies designated under section 239 of the Trade Act of 1974 (19 U.S.C. 2311) or part 617 of this chapter (section 311(b)(10)). Such coordination shall be effected under provisions of an interagency agreement when the State agency responsible for administering programs under this part is different from the State agency administering Trade Act programs.

(b) States may use funds allotted under §§ 631.11 and 631.12 of this part for coordination of worker readjustment programs, (i.e., programs under this part and trade adjustment assistance under part 617 of this chapter) and the unemployment compensation system consistent with the limitation on administrative expenses (see § 631.14(a)(1) of this part). Each State shall be responsible for coordinating the unemployment compensation system and worker readjustment programs (section 314(f)).

(c) Services under this part shall be coordinated with dislocated worker services under Title III of the Carl D. Perkins Vocational Education Act (20 U.S.C. 2351, et seq.) (section 311(b)(5)).

(d) In promoting labor management cooperation, including the formation of labor-management committees under this part, the dislocated worker unit shall consider cooperation and coordination with labor-management committees established under other authorities (section 311(b)(3)(B)).

(e) In accordance with section 402 of the Veterans' Benefits and Programs Improvement Act of 1988 (29 U.S.C. 1751 note) services under this part shall be coordinated with programs administered by the Department of Veterans Affairs and with other veterans' programs such as the Veterans' Job Training Act (29 U.S.C. 1721 note), title IV-C of the Job Training Partnership Act (29 U.S.C. 1721, *et seq.*), part 635 of this chapter, and the Transition Assistance Program.

§ 631.38 State by-pass authority.

(a)(1) In the event that a substate grantee fails to submit a plan, or submits a plan which is not approved by the Governor (see § 631.50(f) of this part), the Governor may direct the expenditure of funds allocated to the substate area.

(2) The Governor's authority under this paragraph (a) to direct the expenditure of funds remains in effect only until such time as a plan is submitted and approved, or a new substate grantee is designated (section 313(c)).

(3) The Governor shall not direct the expenditure of funds under this paragraph (a) until after the affected substate grantee has been afforded advance written notice of the Governor's intent to exercise such authority and an opportunity to appeal to the Secretary pursuant to the provisions of § 628.426(e) of this chapter.

(b)(1) If a substate grantee fails to expend funds allocated to it in accordance with its plan, the Governor, subject to appropriate notice and opportunity for comment in the manner required by section 105(b)(1), (2), and (3) of the Act, may direct the expenditure of funds only in accordance with the substate plan.

(2) The Governor's authority under this paragraph (b) to direct the expenditure of funds shall remain in effect only until:

(i) The substate grantee corrects the failure;

(ii) The substate grantee submits an acceptable modification; or

(iii) A new substate grantee is designated (section 313(a) and (d)).

(3) The Governor shall not direct the expenditure of funds under this paragraph (b) until after the affected substate grantee has been afforded advance written notice of the Governor's intent to exercise such authority and an opportunity to appeal to the Secretary pursuant to the provisions of § 628.426(e) of this chapter.

(c) When the substate area is the State, the Secretary shall have the same authority as the Governor under paragraphs (a) and (b) of this section.

Subpart E—State Programs

§ 631.40 State program operational plan.

(a) The Governor shall submit to the Secretary biennially, in accordance with instructions issued by the Secretary, a State program operational plan describing the specific activities, programs and projects to be undertaken with the funds reserved by the Governor under § 631.32(c) of this part.

(b) The State program operational plan shall include a description of the mechanisms established between the Federal-State Unemployment Compensation System, the Trade Adjustment Assistance Program, the State Employment service and programs authorized under title III of the Act and this part to coordinate the identification and referral of dislocated workers and the exchange of information.

§ 631.41 Allowable State activities

(a) States may use funds reserved under § 631.32(c) of this part, subject to the provisions of the State biennial and program operational plans, for

(1) Rapid response assistance.

(2) Basic readjustment services when undertaken in Statewide, regional or industrywide projects, or, initially, as part of rapid response assistance.

(3) Retraining services, including (but not limited to) those in section 314(d) of the Act when undertaken in Statewide, industrywide and regional programs;

(4) Coordination with the unemployment compensation system, in accordance with § 631.37(b) of this part;

(5) Discretionary allocation for basic readjustment and retraining services to provide additional assistance to substate areas that experience substantial increases in the number of dislocated workers, to be expended in accordance with the substate plan or a modification thereof;

(6) Incentives to provide training of greater duration for those who require it; and

(7) Needs-related payments in accordance with section 315(b) of the Act.

(b) Activities shall be coordinated with other programs serving dislocated workers, including training under Chapter 2 of Title II of the Trade Act of 1974 (19 U.S.C. 2271, et seq.) and part 617 of this chapter.

(c) Where appropriate, State-level activities should be coordinated with activities and services provided by substate grantees.

(d) Retraining services provided to individuals with funds available to a State should be limited to those individuals who can most benefit from and are in need of such services.

(e) Other than basic and remedial education, literacy and English for non-English speakers training, retraining services provided with funds available to a State shall be limited to those for occupations in demand in the area or another area to which the participant is willing to relocate, or in sectors of the economy with a high potential for sustained demand or growth.

(f) Services provided to displaced homemakers should be part of ongoing programs and activities under Title III and this part and not separate and discrete programs.

(g) Basic readjustment services described in § 631.3(b)(1), provided to individuals who have not received a specific notice of termination or layoff and who work at a facility at which the employer has made a public announcement that such facility will close shall, to the extent practicable be funded by the State with funds reserved under § 631.32(c) (section 314(h)).

(h) The provisions of section 107(a), (b) and (e) of the Act (but not subsections (c) and (d) of section 107) and § 627.422 of this chapter apply to State selection of service providers for funded activities authorized in § 631.32(c) of this part.

Subpart F—Substate Programs

§ 631.50 Substate plan.

(a) In order to receive an allocation of funds under § 631.32 of this part, the substate grantee shall submit to the Governor a substate plan, in accordance with instructions issued by the Governor. Such plan shall meet the requirements of this section and shall be approved by the Governor prior to funds being allocated to a substate grantee.

(b) The Governor shall issue instructions and schedules that assure that substate plans and plan modifications conform to all requirements of the Act and this part and contain the statement required by section 313(b) of the Act.

(c) Substate plans shall provide for compliance with the cost limitation provisions of § 631.14 of this part.

(d) The SJTCC or HRIC shall review and submit to the Governor written comments on substate plans.

(e) Prior to the submission of the substate plan to the Governor, the substate grantee shall submit the plan to the parties to the agreement described in § 631.35(c) of this part for review and comment (section 313(a)).

(f) The Governor's review and approval (or disapproval) of a substate plan or plan modification, and appeals to the Secretary from disapprovals thereof, shall be conducted according to the provisions of section 105 of the Act and § 628.426 of this chapter (section 313(c)).

(g) If a substate grantee fails to meet the requirements for plan submission and approval found in this section, the Governor may exercise the by-pass authority set forth at § 631.38 of this part.

(h) When the substate area is the State, the substate plan (and plan modification(s)) shall be submitted by the Governor to the Secretary. The dates for submission and consideration and the Secretary's review and approval (or disapproval) of the plan or plan modification, and appeals to administrative law judges from disapproval thereof, shall be conducted according to the provisions of § 628.430 of this chapter.

§ 631.51 Allowable substate program activities.

(a) The substate grantee may use JTPA section 302(c)(1), (c)(2), and (d) funds allocated by the Governor under § 631.32 of this part for basic readjustment services, retraining services, supportive services and needs-related payments.

(b) The provisions of §§ 627.420 and 627.435 of this chapter (Procurement, Cost principles and allowable costs) apply to funds allocated to substate grantees under this part unless otherwise specifically provided for.

(c) Other than basic and remedial education, literacy and English for non-English speakers training, retraining services provided with funds available to a substate area shall be limited to those for occupations in demand in the area or another area to which the participant is willing to relocate, or in sectors of the economy with a high potential for sustained demand or growth.

(d) Retraining services provided to individuals with funds available to a substate area should be limited to those individuals who can most benefit from and are in need of such services (sections 312(e) and 141(a)).

§ 631.52 Selection of service providers.

(a) The substate grantee shall provide authorized JTPA Title III services within the substate area, pursuant to an agreement with the Governor and in accordance with the approved State plan and substate plan, including the selection of service providers.

(b) The substate grantee may provide authorized JTPA Title III services directly or through contract, grant, or agreement with service providers (section 312(d)).

(c) Services provided to displaced homemakers should be part of ongoing programs and activities under Title III of the Act and this part and not separate and discrete programs.

(d) The provisions of section 107(a), (b), (c) and (e) of the Act and § 627.422 of this chapter apply to substate grantee selection of service providers as specified in this section.

§ 631.53 Certificates of continuing eligibility.

(a) A substate grantee may issue to any eligible dislocated worker who has applied for the program authorized in this part a certificate of continuing eligibility. Such a certificate of continuing eligibility:

(1) May be effective for periods not to exceed 104 weeks;

(2) Shall not include any reference to any specific amount of funds;

(3) Shall state that it is subject to the availability of funds at the time any such training services are to be provided; and

(4) Shall be non-transferable.

(b) Acceptance of a certificate of continuing eligibility shall not be deemed to be enrollment in training.

(c) Certificates of continuing eligibility may be used, subject to the conditions included on the face of the certificate, in two distinct ways:

(1) To defer the beginning of retraining: any individual to whom a certificate of continuing eligibility has been issued under paragraph (a) of this section shall remain eligible for retraining and education services authorized under this part for the period specified in the certificate, notwithstanding the definition of "eligible dislocated worker" in section 301(a) of the Act or the participant eligibility provisions in § 631.3 of this part, and may use the certificate in order to receive retraining services, subject to the limitations contained in the certificate; or

(2) To permit eligible dislocated workers to seek out and arrange their own retraining with service providers approved by the substate grantee; retraining provided pursuant to the certificate shall be in accord with requirements and procedures established by the substate grantee and shall be conducted under a grant, contract, or other arrangement between the substate grantee and the service provider.

(d) Substate grantees shall ensure that records are maintained showing to whom such certificates of continuing eligibility have been issued, the dates of issuance, and the number redeemed by substate grantees.

Subpart G—Federal Delivery of Dislocated Worker Services Through National Reserve Account Funds

§ 631.60 General.

This subpart provides for the use of funds reserved to the Secretary for use under part B of title III of the Act. These funds may be used for the allowable activities, described in section 323 of the Act; demonstration programs, described in section 324 of the Act; the Defense Conversion Adjustment Program (DCAP), described in section 325 of the Act; the Defense Diversification Program (DDP), described in section 325A of the Act; Clean Air Employment Transition Assistance (CAETA), described in section 326 of the Act; and similar uses and programs which may be added to part B of title III of the Act.

§ 631.61 Application for funding and selection criteria.

To qualify for consideration for funds reserved by the Secretary for activities under section 323 of the Act, applications shall be submitted to the Secretary pursuant to instructions issued by the Secretary specifying application procedures, selection criteria, and approval process. Separate instructions will be issued for each category of grant awards, as determined by the Secretary.

§ 631.62 Cost limitations.

The expenditure of funds provided to grantees under this subpart shall be consistent with the cost limitations specified in the grant. Applicants for grants under this subpart may propose, in their grant applications, reasonable costs to be incorporated into the grant. The Grant Officer may accept or modify such proposals at his/her discretion. Where proposals do not adequately justify to the Grant Officer's satisfaction the costs to be incorporated into the grant, the cost limitations that shall be applied shall be those specified in section 315 of the Act and described in paragraphs (a), (b) and (c) of § 631.14 of this part.

§ 631.63 Reporting.

(a) Grantees under part B of title III of the Act shall submit reports as prescribed by the Secretary.

(b) *Significant developments.* Grantees shall notify the Secretary of developments that have a significant impact on the grant or subgrant supported activities, including problems, delays, or adverse conditions which may materially impair the ability to meet the objectives of the project. This notification shall include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

§ 631.64 General administrative requirements.

(a) Activities under this subpart may be carried out and funding provided directly to grantees other than States.

(b) All grantees and subgrantees under this subpart that are States or substate grantees are subject to the provisions in part 627 of this chapter.

(c) For grantees other than States and substate grantees, the following provisions shall apply to grants under this subpart.

(1) *Grievance procedures.* (i) Each grantee shall establish and maintain a grievance procedure for grievances or complaints about its programs and activities from participants, subgrantees, subcontractors, and other interested persons. Hearings on any grievance shall be conducted within 30 days of filing of a grievance and decisions shall be made not later than 60 days after the filing of a grievance. Except for complaints alleging fraud or criminal activity, complaints shall be made within one year of the alleged occurrence.

(ii) Grantees shall be subject to the provisions of section 144 of the Act, and 29 CFR part 95 or 97, as appropriate.

(iii) If the grantee is already subject to the grievance procedure process and requirements established by the Governor (i.e., through another JTPA grant, subgrant, or contract), its adherence to that procedure shall meet the requirements of this paragraph (c)(1).

(2) *Uniform Administrative Standards.* Grantees shall be subject to the standards and requirements described in 29 CFR part 95 or 97, as appropriate, as well as any additional standards prescribed in grant documents or Secretarial guidelines. If the grantee/ subgrantee is already subject to additional standards established by the Governor (*i.e.*, through another JTPA grant, subgrant, or contract), its adherence to those standards shall meet the requirements of this paragraph (c)(2).

§ 631.65 Special provisions for CAETA and DDP.

(a) *Allowances for Job Search Outside the Commuting Area under CAETA.* Allowances for job search outside the commuting area shall be an allowable activity under CAETA, only where it has been determined that the dislocated worker cannot reasonably be expected to secure suitable employment within the commuting area in which the worker resides. Procedures for determining whether a dislocated worker cannot reasonably be expected to secure suitable employment within the commuting area in which the dislocated worker resides shall be described in the grant application and shall be subject to approval by the Grant Officer. The cost of job search outside the commuting area shall be an allowable cost, but shall not provide for more than 90 percent of the cost of necessary job search expenses, and may not exceed a total of $800, unless the need for a greater amount is justified in the grant application and approved by the Grant Officer.

(b) *Relocation Allowances under CAETA.* Relocation allowances under CAETA shall be allowable only where the eligible dislocated worker cannot reasonably be expected to secure suitable employment in the commuting

area in which the worker resides and has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which the worker wishes to relocate, or has obtained a bona fide offer of such employment, provided that the worker is totally separated from employment at the time relocation commences. The cost of relocation for an eligible dislocated worker shall not exceed an amount which is equal to the sum of the reasonable and necessary expenses incurred in transporting the dislocated worker and the dislocated worker's family, if any, and household effects, and a lump sum relocation allowance, equivalent to three times such worker's average weekly wage. The maximum relocation allowance, however, shall not exceed $800, unless a greater amount is justified in the grant application and approved by the Grant Officer. Necessary expenses shall be travel expenses for the dislocated worker and the dislocated worker's family and for the transfer of household effects. Reasonable costs for such travel and transfer expenses shall be by the least expensive, most reasonable form of transportation.

(c) *Needs-related payments under CAETA and DDP.* Funds from grants for CAETA and DDP shall be available for needs-related payments to enable participants to participate in and complete training or education programs under those grants, subject to the following:

(1) Needs-related payments shall be provided to the participant only if the participant:

(i) Does not qualify or has ceased to qualify for unemployment compensation;

(ii) Has been enrolled in training programs by the end of the 13th week of an individual's initial unemployment benefit period following the layoff or termination, or, if later, the end of the 8th week after an individual is informed that a short-term layoff will exceed six months;

(iii) Is making satisfactory progress in training or education programs under this section, except that an individual shall not be disqualified pursuant to this clause for a failure to participate that is not the fault of the individual; and

(iv) Currently receives, or is a member of a family which currently receives, a total family income (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, is not in excess of the lower living standard income level.

(2) Needs-related payments shall be equal to the higher of:

(i) The applicable level of unemployment compensation; or

(ii) The poverty level determined in accordance with the criteria established by the Director of the Office of Management and Budget.

(3) Total family income shall be reviewed periodically, based upon information obtained from participants with respect to such income and changes therein, to determine continued eligibility, or to begin payments to individuals previously found ineligible for needs-related payments under this section.

Subpart H—[Reserved]

Subpart I—Disaster Relief Employment Assistance

§ 631.80 Scope and purpose.

This subpart establishes a Disaster Relief Employment Assistance program under title IV, part J of JTPA which shall be administered in conjunction with the title III National Reserve Grants Programs.

§ 631.81 Availability of funds.

Funds appropriated to carry out this subpart may be made available by grant to the Governor of any State within which is located an area that has suffered an emergency or a major disaster as defined in paragraphs (1) and (2), respectively, of section 102 of the Disaster Relief Act of 1974 (42 U.S.C. 5122(1) and (2)) (referred to in this subpart as the "disaster area"). The Secretary shall prescribe procedures for applying for funds.

§ 631.82 Substate allocation.

(a) Not less than 80 percent of the grant funds available to any Governor under § 631.81 of this part shall be allocated by the Governor to units of general local government located, in whole or in part, within such disaster areas. The remainder of such funds may be reserved by the Governor for use, in concert with State agencies, in cleanup, rescue, repair, renovation, and rebuilding activities associated with such major disaster.

(b) The JTPA title III program substate grantee for the disaster area shall be the designated local entity for administration of the grant funds under this subpart.

§ 631.83 Coordination.

Funds made available under this subpart to Governors and units of general local government shall be expended in consultation with—

(a) Agencies administering programs for disaster relief provided under the Disaster Relief Act of 1974; and

(b) The JTPA title II administrative entity and the private industry council in each service delivery area within which disaster employment programs will be conducted under this subpart.

§ 631.84 Allowable projects.

Funds made available under this subpart to any unit of general local government in a disaster area—

(a) Shall be used exclusively to provide employment on projects that provide food, clothing, shelter and other humanitarian assistance for disaster victims; and on projects involving demolition, cleanup, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within the disaster area; and

(b) May be expended through public and private non-profit agencies and organizations engaged in such projects.

§ 631.85 Participant eligibility.

An individual shall be eligible for disaster employment under this subpart if such individual is—

(a)(1) Eligible to participate or enroll, or is a participant or enrolled, under Title III of the Act, other than an individual who is actively engaged in a training program; or

(2) Eligible to participate in programs or activities assisted under Native American and Migrant Programs; and

(3) Unemployed as a consequence of the disaster.

(b) [Reserved].

§ 631.86 Limitations on disaster relief employment.

No individual shall be employed under this subpart for more than 6 months for work related to recovery from a single natural disaster (described in § 631.3(f) of this part).

§ 631.87 Definitions.

As used in this subpart, the term *unit of general local government* includes:

(a) In the case of a community conducting a project in an Indian reservation or Alaska Native village, the grantee designated under the JTPA section 401 Indian and Native American Program (see part 632 of this chapter), or a consortium of such grantees and the State; and

(b) In the case of a community conducting a project in a migrant or seasonal farmworker community, the grantee designated under the JTPA section 402 Migrant and Seasonal Farmworker Program (see part 633 of this chapter), or a consortium of such grantees and the State.

7. Part 637 is revised to read as follows:

PART 637—PROGRAMS UNDER TITLE V OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—General Provisions

637.100 Scope and purpose.
637.105 Definitions.

Subpart B—Program Planning and Operation

637.200 Allotments to States.
637.205 Notice of intent to participate.
637.210 Incentive bonus program applications.
637.215 Review and approval of applications for incentive bonus payments.
637.220 Eligibility criteria for individuals to be counted in determining incentive bonuses.
637.225 Determination of incentive bonus.
637.230 Use of incentive bonuses.

Subpart C—Additional Title V Administrative Standards and Procedures

637.300 Management systems, reporting and recordkeeping.
637.305 Federal monitoring and oversight.
637.310 Audits.

Subpart D—Data Collection [Reserved]

Authority: 29 U.S.C 1579(a); 29 U.S.C. 1791i(e).

Subpart A—General Provisions

§ 637.100 Scope and purpose.

(a) This part implements Title V of the Act which creates a program to provide incentive bonuses to States for providing certain employable dependent individuals with job training to reduce welfare dependency, to promote self-sufficiency, to increase child support payments, and to increase employment and earnings (section 501).

(b) This part applies to programs operated with funds under Title V of the Job Training Partnership Act.

§ 637.105 Definitions.

In addition to the definitions contained in sections 4, 301, 303(e), and in § 626.4 of this chapter, the following definitions apply to the administration of Title V of the Act and this part:

Absent parent means an individual who is continuously absent from the household and who is a non-custodial parent of a dependent child receiving aid to families with dependent children (AFDC) under part A of title IV of the Social Security Act (42 U.S.C. 601, *et seq.*).

Disability assistance means benefits offered pursuant to Title XVI of the Social Security Act, relating to the supplemental security income program.

Federal contribution means the amount of the Federal component of cash payments to individuals within the participating State under welfare and/or disability assistance programs, including Part A of Title IV of the Social Security Act.

Subpart B—Program Planning and Operation

§ 637.200 Allotments to States.

(a) For each program year for which funds are appropriated to carry out programs under this part, the Secretary shall pay to each participating State the amount the State is eligible to receive in accordance with this part. No payments shall be made for any years for which funds are not appropriated and/or not available (section 502(a)).

(b) If the appropriation is not sufficient to pay to each State the amount it is eligible to receive in accordance with this part, the State shall receive a percentage of the total available funds equal to the percentage of its bonus compared to the national total of bonuses (section 502(b)).

(c) If an additional amount is made available after the application of paragraph (b) of this section, such additional amount shall be allocated among the States by increasing payment in the same manner as was used to reduce payment, except that no State shall be paid an amount which exceeds the amount to which it is eligible (section 502(c)).

§ 637.205 Notice of intent to participate.

(a) Any State seeking to participate in the incentive bonus program shall notify the Secretary of its intent to do so no later than 30 days before the beginning of its first program year of participation (i.e., June 1) (section 505(a)).

(b) Pursuant to instructions issued by the Secretary, the notification referenced in paragraph (a) of this section shall be in the form of a letter from the Governor to the Secretary advising the Secretary of the State's intention to apply for, receive and expend bonuses under this program in a manner consistent with this part (section 505(b)).

(c) After the State's submission of a notice of intent to participate, incentive bonuses may be claimed by a State for any individual who:

(1)(i) Was an absent parent of any child receiving AFDC at the time such individual was determined to be eligible for participation in programs under the Act;

(ii) Has participated in education, training, or other activities (including the Job Corps) funded under the Act; and

(iii) Pays child support for a child specified in paragraph (c)(1) of this section following termination from activities funded under the Act; or

(2)(i) Is blind or disabled;

(ii) Was receiving disability assistance at the time such individual was determined to be eligible for participation in programs under the Act;

(iii) Has participated in education, training, or other activities (including the Job Corps) funded under the Act; and

(iv) Earns from employment a wage or an income (section 506).

(d) A Governor may withdraw the State's participation in the incentive bonus program in any program year by submitting a written notice of withdrawal.

§ 637.210 Incentive bonus program applications.

(a) Any State seeking to receive an incentive bonus under this title shall submit an Incentive Bonus Program application pursuant to instructions issued by the Secretary that will contain the criteria for approval of such application. Each application shall contain, at a minimum, the following information:

(1) A list of eligible individuals who met the requirements of § 637.220 of this part during the program year;

(2) The amount of the incentive bonus attributable to each eligible individual who is claimed by the State; and

(3) A statement certifying the availability of documentation to verify the eligibility of participants and the amount of the incentive bonus claimed by the State (section 505(b)).

(b) The application for any program year shall be submitted by the State to the Secretary no later than August 31 following the end of the program year for which the bonus is being claimed. A copy of such application shall also be submitted at the same time to the appropriate DOL Employment and Training Administration Regional Office.

§ 637.215 Review and approval of applications for incentive bonus payments.

(a) The Secretary shall review all applications for overall compliance with JTPA, the requirements of this part, and the instructions issued by the Secretary.

(b) The Secretary shall inform a State within 30 days after receipt of the application whether or not its application has been approved.

(c) If the application is not approved, the Department shall issue an initial notice of denial of payment indicating the reasons for such denial. The Governor will then have 30 days to respond to the reasons for the denial before a final decision is made.

(d) If the Department determines that the additional information provided

does not adequately respond to the questions raised in the initial review process, a final denial of payment shall be issued. The Governor may then appeal the decision in accordance with the procedures at subpart H of part 627 of this chapter (sections 504(c) and 505(c)).

§ 637.220 Eligibility criteria for individuals to be counted in determining incentive bonuses.

An individual shall be eligible to be counted as part of the State's request for an incentive bonus payment under this part if the individual:

(a)(1) Was an absent parent of any child receiving AFDC at the time such individual was determined to be eligible for participation in programs under the Act;

(2) Has participated in education, training, or other activities (including the Job Corps) funded under the Act; and

(3) Pays child support for a child specified in paragraph (a)(1) of this section following termination from activities funded under the Act; or

(b)(1) Is blind or disabled;

(2) Was receiving disability assistance at the time such individual was determined to be eligible for participation in programs under the Act;

(3) Has participated in education, training, or other activities (including the Job Corps) funded under the Act; and

(4) Earns a wage or an income from employment (section 506).

§ 637.225 Determination of incentive bonus.

The amount of the incentive bonus to be paid to each State shall be the total of the incentive bonuses claimed for each eligible individual within the State. The amount of the incentive bonus to be paid each State shall be determined by the sum of:

(a) An amount equal to the total of the amounts of child support paid by each individual who is eligible under § 637.220(a) of this part, for up to 2 years after such individual's termination from JTPA; and

(b) An amount equal to the total reduction in the Federal contribution to the amounts received under title XVI of the Social Security Act (42 U.S.C. 1381, *et seq.*) by each individual who is eligible under § 637.220(b) of this part, for up to 2 years after such individual's termination from JTPA (section 503).

§ 637.230 Use of incentive bonuses.

(a) During any program year, the Governor may use an amount not to exceed 5 percent of the State's total bonus payment for the administrative costs incurred under this program, including data and information collection and compilation, recordkeeping, or the preparation of applications for incentive bonuses (section 504(a)(1)(A)).

(b) The remainder, not less than 95 percent of the incentive bonuses received, shall be distributed to SDAs and Job Corps Centers within the State in a manner consistent with an agreement between the Governor and these SDA's and centers. This agreement shall reflect an equitable method of distribution which is based on the degree to which the effort of the SDA and/or Center contributed to the State's qualification for incentive bonus funds under title V (section 504(a)(1)(B)).

(c) Not more than 10 percent of the incentive bonus received in any program year by each SDA and/or Job Corps Center may be used for the administrative costs of establishing and maintaining systems necessary for operation of programs under title V, including the costs of providing incentive payments described in paragraph (d) of this section, technical assistance, data and information collection and compilation, management information systems, post-program followup activities, and research and evaluation activities (section 504(a)(2)).

(d) Each SDA and/or Job Corps Center may make incentive payments to service providers, including participating State and local agencies, and community-based organizations, that demonstrate effectiveness in delivering employment and training services to eligible individuals under this title (section 504(b)).

(e) All remaining funds received by each SDA shall be used for activities described in sections 204 and 264 of JTPA and shall be subject to the regulations governing the operation of programs under titles II–A and II–C of JTPA. All remaining funds received by each Job Corps Center shall be used for activities authorized under part B of title IV (section 504(a)(2).

Subpart C—Additional Title V Administrative Standards and Procedures

§ 637.300 Management systems, reporting and recordkeeping.

(a) The Governor shall ensure that the State's financial management system and recordkeeping system comply with subpart D of part 627 of this chapter.

(b) Notwithstanding the provisions of § 629.455 of this chapter, the Governor shall report to the Secretary pursuant to instructions issued by the Secretary regarding activities funded under this part. Reports shall be required semi-annually and annually. Reports shall be provided to the Secretary within 45 calendar days after the end of the report period.

(c) The Governor shall assure that appropriate and adequate records are maintained for the required time period to support all incentive bonus payment applications. Such records shall include documentation to support individuals' eligibility under this part.

§ 637.305 Federal monitoring and oversight.

The Secretary shall conduct oversight of the programs and activities conducted in accordance with this part.

§ 637.310 Audits.

The Governor shall ensure that the State complies with the audit provisions at § 629.480 of this chapter.

Subpart D—Data Collection [Reserved]

Signed at Washington, DC, this 18th day of August, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–20871 Filed 9–1–94; 8:45 am]

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September 2, 1994

Part III

Environmental Protection Agency

40 CFR Part 745

Lead; Requirements for Lead-Based Paint Activities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62128; FRL–4633–9]

RIN 2070–AC64

Lead; Requirements for Lead-based Paint Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing regulations governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified. This proposed rule would also establish standards for performing lead-based paint activities and require that all lead-based paint activities be performed by certified individuals. When promulgated, the rule would fulfil the mandate of section 402 (a)(1) of Title IV of the Toxic Substances Control Act (TSCA). Additionally, as part of this proposed rule, EPA has, in accordance with section 404(d) of TSCA, developed a proposed Model State Program. When promulgated, this program may be adopted by any State that seeks to administer and enforce a State program under Title IV of TSCA.

DATES: Written comments in response to this proposed rule must be received on or before November 1, 1994. At a later date, the Agency will announce the time and place of an informal hearing where oral comments will be heard.

ADDRESSES: Submit written comments, in triplicate, identified by the docket number OPPTS–62128, by mail to: TSCA Public Docket Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. For further information regarding the submission of comments containing confidential business information (CBI), see Unit IX. of this preamble.

FOR FURTHER INFORMATION CONTACT: For general information: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404. TDD: 202–554–0551. For technical questions: Diane Sheridan (202) 260–0961.

SUPPLEMENTARY INFORMATION:

I. Authority

EPA is issuing this proposed rule under the authority of section 402 and 404 of Title IV of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2682 and 2684.). Section 402(a) of TSCA directs EPA to promulgate regulations governing lead-based paint activities. Section 404(a) of TSCA requires that any State that seeks to administer and enforce the requirements established by the Agency under section 402 or 406 of TSCA must submit to the Administrator of EPA, in such form as the Administrator shall require, a request for authorization of such a program. Section 406 of TSCA requires EPA to publish and from time-to-time revise, a lead hazard information pamphlet and to publish regulations requiring the distribution of such pamphlet. The requirements of section 406 are being developed in a separate rulemaking.

II. Objective

The objective of this regulation is to address the nation's need for a qualified and properly trained workforce to assist in the elimination of hazards associated with lead-based paint. Providing for this workforce will ensure that individuals and firms will conduct lead-based paint activities in a way that will safeguard the environment and protect human health, specifically, the health of building occupants (especially children under 6 years of age) and the workers themselves.

To successfully confront the issues associated with lead-based paint hazards at the national level will require the involvement of many partners working together. In promulgating this regulation, EPA will be establishing the framework required to address lead-based paint hazards. This framework will ultimately provide support for and enhance activities currently conducted by public health officials.

In addition to a support system for public health officials, a suitable infrastructure is needed for other mandates of TSCA Title IV. These mandates include the promulgation of regulations for the disclosure of lead-based paint hazards in real estate transactions, and the development of a pamphlet to educate the public on potential hazards associated with renovation and remodeling activities. Activities such as these increase public awareness of the hazards of lead-based paint, resulting in the need for a workable regulatory infrastructure to respond to the public's concerns.

The Agency recognizes the nation's public health communities as powerful contributors in support of the program outlined in this proposed regulation. Through the collective efforts of public health communities to address childhood lead poisoning in areas such as blood-lead screening and case management, and EPA, through the identification and control of lead-based paint hazards, the goal of preventing the poisoning of children from lead-based paint will be realized nationwide.

III. Background

On October 28, 1992, the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Title X") became law. The purposes of Title X include:

1. To develop a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible.
2. To reorient the national approach to the presence of lead-based paint in housing to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock.
3. To encourage effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction and by ending the current confusion over reasonable standards of care.

The Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA by adding a new Title IV. Several sections of Title X direct EPA to promulgate regulations aimed at fulfilling the purposes of the Title X. These include TSCA section 402, Lead-Based Paint Activities Training and Certification, which directs EPA to promulgate a final regulation to govern the training and certification of individuals engaged in lead-based paint activities, the accreditation of training programs and standards for conducting lead-based paint activities; and section 404, Authorized State Programs, which provides that any State may seek to administer and enforce the requirements established by the Agency under sections 402 and 406. This proposed rule addresses both sections 402(a) and 404(d). Rules to address the requirements of other sections of TSCA Title IV (e.g. sections 403 and 406), are being proposed separately.

Independently, these other sections of TSCA Title IV will support the overriding objectives of Title X. For example, a required information dissemination program to inform the public of lead-based paint hazards in the home has been proposed under section 406. Section 403 health-based standards will be developed and promulgated to provide the basis for identifying hazardous levels of lead in

dust, soil, and paint. Studies to determine whether renovation and remodelling activities may pose a lead-based paint hazard, as well as studies to determine the efficiencies of various abatement technologies are also being conducted under section 402(c)(2).

Given the interrelated nature of the various sections of TSCA Title IV, EPA has developed and proposed a subpart A to 40 CFR part 745 which would serve as a reference point for the terms and provisions common to each of the regulations to be promulgated under Title IV. Later in this preamble these other sections of Title IV and their relevance to today's proposal will be discussed in more detail.

Before it began the development of this proposed rule, EPA informally met with a broad range of interested parties to solicit information on the subject of lead-based paint activities training, accreditation, certification, and standards. In addition, the Agency received written comments from dozens of individuals, firms, organizations and States, all of whom have provided their own perspective on Title X. Additionally, while the Agency continued to meet informally with interested groups and review written comments, the Society for Occupational and Environmental Health (SOEH) held a series of workshops with experts in the worker protection and training arena as participants. Following the workshops, SOEH drafted and submitted to the Agency its recommendations for effective worker protection during lead-based paint activities. The Agency has included the SOEH document and all other written comments, and written summaries of meetings in the public docket.

The Agency is grateful to all who took the time to provide information, ideas, and suggestions. Over the last several months, the Agency has carefully reviewed and considered all of this input. While not all points of view were incorporated in the proposed rule, this proposal reflects many of the thoughts and viewpoints of these interested parties.

IV. Scope

A. Lead-Based Paint Activities

This proposed regulation deals with the broad category of lead-based paint activities. The term lead-based paint activities is defined by section 402(b) of TSCA to mean: (1) In the case of target housing — risk assessment, inspection, and abatement; and (2) in the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure — identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition. For the purposes of this definition, the term "deleading" means activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities. Abatement, as defined in section 401 of TSCA, essentially means any set of measures designed to eliminate lead-based paint hazards permanently. The definition of abatement in the proposed rule is intended to include activities performed by those individuals, who by design or intent, perform lead abatement as defined by TSCA Title IV.

It should be noted that this proposed regulation would not require any person to abate lead-based paint, or to inspect for the presence of lead-based paint. Rather, it would establish requirements and procedures applicable to individuals and firms responsible for making a determination of the presence of lead-based paint and/or lead-based paint hazards and identifying control strategies to address these hazards. If a decision is made to conduct an abatement, this regulation would provide standards and procedures for conducting the abatement.

Congress, in Title X, has purposefully excluded renovation and remodeling activities from the regulation's definition of abatement. Section 402(c)(2) of TSCA requires the Agency to conduct a study to assist in determining the extent to which persons engaged in specific renovation and remodeling activities in target housing, pre-1978 public buildings, and commercial buildings are exposed to lead or create lead hazards in the conduct of such activities. Section 402(c)(2) requires that this study be completed by April 28, 1995. Based on the results of this study and other information collected, the regulation being proposed today must be amended by October 28, 1996, to apply only to certain renovation and remodeling activities that - according to the section 402(c)(2) study and in consultation with labor organizations, contractors, and experts in lead health effects create a lead-based paint hazard. As part of today's proposed rule, the Agency is soliciting any available data that might be helpful in defining the risks posed to workers and/or building occupants during typical renovation and remodeling activities. This information will assist the Agency in the required rule revision. EPA recommends that States that are currently developing legislation for a State lead program consider including legislative authority for the future regulation of renovation and remodeling activities within the scope of the revised EPA regulations.

Although the scope of this proposed regulation covers abatement activities as a means of controlling lead-based paint hazards, the Agency does not wish to suggest that total abatement is the only option for controlling these hazards. A wide variety of effective hazard control measures can be utilized. In a particular dwelling, it is possible that a variety of control strategies (e.g., encapsulation, enclosure, component replacement) may need to be utilized to address all of the lead-based paint hazards identified by the risk assessor. Complete abatement is not always the best or most appropriate response to address lead-based paint hazards.

B. Homeowners

Title IV of TSCA does not specifically address whether the regulatory requirements developed for lead abatement contractors under section 402 are also intended to apply to individual homeowners who conduct lead-based paint activities within their own dwelling units. The Agency has decided that its section 402 rules should apply to all individuals and firms conducting lead-based paint activities in target housing and other specifically identified categories of buildings and structures, except persons who perform lead-based paint activities at residences which they own, unless the residence is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being conducted. If the property is occupied by an individual that is not the owner or the owner's immediate family, any lead-based paint activity, conducted at that time, must be conducted by a certified individual.

The very title of section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, indicates that the scope and focus of this section is on training and certification requirements for *contractors*, not homeowners. Section 1021 of the 1992 Act added a new Title IV to TSCA. The new Title IV includes both section 402 ("Lead-Based Paint Activities Training and Certification") and 404 ("Authorized State Programs"). Significantly, section 1021 itself is entitled "Contractor Training and Certification."

There is no express requirement in the statute that homeowners doing lead-based paint activities in their homes must be trained and certified. Nor is there any such indication in the legislative history. The section 402(a) requirement that all abatements in target housing be performed by certified

contractors has been interpreted by EPA to mean that a homeowner who hires a contractor to do abatement in his home must hire a contractor who is certified. EPA does not interpret this requirement to mean that uncertified homeowners cannot do their own abatements. While EPA recognizes it might be possible to draw a different inference from the above-referenced certified contractor language of section 402(a) as it stands alone, the Agency believes that the Congressional focus on regulating contractor activity evidenced by the reference in section 1021's title to "contractors" as well as certain other language in sections 402(c)(3) and 406(b) requiring persons who perform renovation of target housing *for compensation* (e.g. "contractors") to provide safety pamphlets to owners and occupants creates enough ambiguity with respect to Congressional intent that such an inference need not be drawn.

For example, in section 402(c), as discussed earlier in this preamble, Congress recognized that more needed to be learned about the risks from renovation and remodelling activities before subjecting such activities to regulation. Following the completion, by April 1995, of a study of the risks created by renovation and remodelling activities, Congress has required EPA to revise the section 402(a) regulations to apply them to those renovation and remodeling activities which create lead hazards. In section 402(c), Congress told EPA what factors to consider "[i]n determining which *contractors* are engaged in such activities" and required that, if EPA determines that "any category of *contractor*" does not require certification, EPA shall publish an explanation. Again, because of the fact that the Statute specifically mentions "*contractors*" and not "homeowners," it is EPA's interpretation of section 402(c)(3) that Congress' focus was on the need to regulate contractors doing renovation and remodeling activities, and not homeowners doing renovation and remodeling of their own homes.

EPA assumes that in writing section 402(c), Congress did not direct that homeowners ultimately be regulated under section 402(a) because Congress never intended homeowners doing abatements in their own homes to be covered by section 402(a) in the first place. Indeed, homeowners working in their own homes are more likely to be engaged in the sort of activities described in the definition of "interim controls," which activities require neither training nor certification.

While EPA recognizes that the universe of potentially regulated entities is broader than just contractors and homeowners doing their own abatements, EPA has decided to exclude only the latter category of individuals from the scope of these regulations. EPA has chosen to draft this exclusion narrowly because it recognizes the potential health and environmental hazards that could result from improperly performed abatements and wants to minimize such hazards. However, EPA invites comment on the scope of this exclusion as drafted and specifically on whether other categories of individuals or groups (e.g. renters abating their own apartments or volunteer organizations that do renovation work) should also be excluded.

EPA is, however, concerned about the potential exposures to lead which an untrained and uncertified homeowner may cause to himself/herself and other family members as a result of work done. As a result of this concern, EPA strongly encourages States to consider whether they wish to use their own legal authority to regulate work done by the homeowner. For example, States may wish to consider the inclusion of standards for lead-based paint activities in appropriate building codes. This approach could mirror other State and local regulatory programs already used to control other work done in homes such as electrical and plumbing work.

In addition to encouraging States to consider programs with the authority to regulate homeowners, EPA plans an aggressive awareness campaign directed at homeowners. This program will include not only the design and distribution of informational materials, but the Agency also intends to develop seminars to alert homeowners to the potential hazards associated with lead-based paint activities.

C. Building Types

In defining lead-based paint activities, section 402(b) of TSCA categorized target housing singly, and public buildings, commercial buildings, and superstructures (e.g., bridges and watertowers) together. Lead-based paint activities conducted in target housing are identified in 402(b) as risk assessment, inspection, and abatement. For public buildings, commercial buildings, and superstructures, 402(b) defines lead-based paint activities as: the identification of lead-based paint and materials containing lead-based paint; deleading; removal of lead from bridges; and demolition.

The Agency is proposing to group public building and target housing activities together as one category, and to group commercial building and superstructure activities together as a second category.

Target housing is defined in the proposed regulation and in section 1004 of Title X to mean "any housing constructed prior to 1978 except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling."

Public buildings are not defined under Title X. EPA is proposing to define a public building as any building built before 1978, that is generally open to the public or occupied or visited by children. For example schools, daycare centers, museums, airports, hospitals, stores, convention centers, and federal and other government facilities are all considered to be public buildings. It should be noted that all federal facilities, regardless of whether they are target housing, public buildings, commercial building, or steel structures are specifically covered under this regulation, as directed by TSCA section 408.

EPA is proposing to define a commercial building as any building used primarily for commercial or industrial activity, which is generally not open to the public, or occupied or visited by children, including but not limited to, warehouses, factories, storage facilities, aircraft hangers, garages, and wholesale distribution facilities. Under TSCA, section 402(b) the only example of a superstructure listed is a bridge, but drawing on the common meaning of superstructure, EPA is proposing to include other structures such as watertowers, aboveground storage tanks, oil refineries, utility and other structures.

The Agency's determination to group target housing and public buildings together is based on two factors. One factor is that the potential for lead exposure in a public building setting, such as a museum, school, or daycare center, is similar to the potential for lead exposure to children in target housing, where families and children reside. Consequently, EPA is proposing standards for lead-based paint activities in public buildings that have the same degree of protectiveness as those for target housing.

The second factor in EPA's decision to propose separate categories is due to differences in the structural design and building materials that are commonly used in target housing/public buildings and those used in commercial buildings/superstructures. For example, the structural design and building materials (e.g., wallboard, ceiling tiles,

flooring materials, wooden doorways, and window frames) found in public buildings are often similar to those found in target housing. Commercial buildings and superstructures, on the other hand, typically are constructed of metal, such as structural steel.

Work practices for the conduct of lead-based paint activities also differ for the aforementioned categories. The building materials in commercial buildings and superstructures require work practices for deleading activities that are very different than activities associated with lead abatement in target housing or public buildings. For example, the deleading of a watertower or industrial warehouse calls for sophisticated rigging and scaffolding equipment and the erection of containment structures. These methods are not applicable to the abatement of lead-based paint in target housing or public buildings.

Given these differences, as well as information supplied by the professional community on deleading steel structures and commercial buildings, the Agency believes there is little crossover between workers practicing in the target housing/public buildings realm and those in the commercial building/steel structures realm. Rather, evidence suggests that individuals are either working in the abatement of target housing and public buildings, or in the deleading of commercial buildings and steel structures.

In drafting this proposal, the Agency considered information provided by several professional groups whose members perform work in commercial buildings and superstructures. Based on this information, it appears that a broader range of tasks are practiced by fewer categories of individuals working these structures. Consequently only two accreditation disciplines (supervisor and worker) have been established for individuals working in commercial buildings and superstructures.

Therefore, this proposal would establish the following certification disciplines: inspector technician, inspector/risk assessor, supervisor, planner/project designer, and worker for target housing and public buildings; and supervisor and worker for commercial buildings and superstructures.

EPA is also proposing standards for lead-based paint activities in three separate categories of facilities. These categories include target housing, public buildings, and commercial buildings and superstructures. In target housing, the standards cover inspection, risk assessment, and lead abatement. The second set of standards, for public buildings, covers the identification of lead-based paint and lead-containing materials, risk assessment, abatement, and demolition. The final set of standards are for identification, deleading, and demolition in commercial buildings and superstructures.

The Agency is requesting comment on its proposed definition of public buildings and its proposal to regulate them in a fashion similar to target housing. Specifically, the Agency is interested in comment on whether the universe of building types covered under the proposed definition of public buildings comprise the appropriate range of building types. Further, the Agency is interested in comment on an alternative strategy that would decrease the number of public building types that should be regulated in a fashion similar to target housing.

D. Section 403

As part of the Lead-Based Paint Exposure Reduction Act, sections 402 and 404 represent just two of the many mandates that EPA is working under to address the issue of lead exposure. Section 403 of TSCA is one of these other mandates. That section requires that the Agency shall ". . .promulgate regulations which shall identify. . .lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil." The section 403 regulations will represent EPA's determination of those conditions that cause exposure to lead in paint, residential soil, and dust that would result in adverse human health effects. EPA expects the findings of this rule will be one of the most widely used tools to assist persons who will make the decisions on whether and how to reduce risk from lead-based paint, soil, and dust.

Title IV established the same 18–month deadline for promulgation of the section 403 rule as for the rules under sections 402 and 404. At this time, the Agency is still developing its proposed regulation under section 403. While the 403 rule, when promulgated, will be important for the lead exposure reduction program, it must be emphasized that it is essentially a source of guidance for the decisionmaker.

This is in contrast to today's proposed rule under sections 402 and 404, which is an infrastructure and "how to" type of rule. When promulgated, today's proposal will develop an infrastructure of training, certification, and standards for individuals engaged in lead-based paint activities. The 403 rule will identify conditions resulting in adverse human health effects which may be eliminated pursuant to the standards and requirements contained in the 402 and 404 rule.

When promulgated, the section 403 rule will be an important part of the federal lead exposure reduction program. However, it should be noted that the absence of the proposed section 403 rule at this time does not, in the Agency's opinion, significantly impair the public's ability to meaningfully comment on today's proposal. This is because the identification at a later date in the section 403 rule levels of lead that would result in adverse human health effects, is not expected to have a significant impact on the development of the standards and requirements of this proposed regulation.

For example, the procedures established in proposed § 745.228(b)(4) of the regulatory text for the conduct of dust sampling as a part of a risk assessment in target housing are not expected to change as a function of the level established for lead-contaminated dust under the section 403 rule. Similarly, the number of course hours needed to properly train a risk assessor would probably not change due to the establishment of a particular definition of "lead-based paint hazard" under the section 403 regulation. In summary, the Agency believes that the standards and requirements proposed in the 402 and 404 rules can be evaluated independently of the definitions to be proposed in the future under section 403.

Recently, the Agency published guidance on residential lead-based paint, lead-contaminated dust, and lead-contaminated soil. This guidance is intended to be used to prioritize primary prevention activities that address hazards from lead in and around residences. EPA expects that these hazards will be among those that will be identified when regulations are issued under section 403. The levels and conditions described in this guidance should be used by decisionmakers' to identify lead-based paint hazards, sources of lead exposure, and the need for control actions in residential environments where children may be present.

V. Accreditation of Training Programs

A. Introduction

Section 402(a)(1) of Title IV of TSCA requires EPA to promulgate regulations governing lead-based paint activities to ensure, among other items, that training programs for individuals engaged in lead-based paint activities are accredited. Section 402(a)(2) states that these accreditation regulations must

contain specific requirements for the accreditation of lead-based paint activities training programs for workers, supervisors, inspectors and planners, and other individuals involved in lead-based paint activities. These requirements must include, at least: (1) Minimum requirements for the accreditation of training providers, (2) minimum training curriculum requirements, (3) minimum training hour requirements, (4) minimum hands-on training requirements, (5) minimum trainee competency and proficiency requirements, and (6) minimum requirements for training program quality control. Proposed § 745.225, Minimum Requirements for the Accreditation of Training Programs, describes a Federal accreditation program that EPA believes meets these requirements. Once the final rule is promulgated, § 745.225 may be used by States, as defined by section 3 of TSCA as a model for purposes of establishing their own accreditation and certification programs in the context of applying for authorization under section 404 of Title IV of TSCA. The procedures for State program authorization are addressed in subpart Q of the regulatory text.

B. Framework for Training

Under the proposed § 745.225(a), training programs may be accredited to offer courses for the following disciplines: Inspector technician, inspector/risk assessor, supervisor, planner/project designer, and worker for target housing and public buildings; and supervisor and worker for commercial buildings and superstructures.

"Discipline" means a specific type or category of lead-based paint activity. For example, an "inspector technician for target housing and public buildings" would be a discipline.

The course content, as well as the tasks associated with these job disciplines, are based principally on the definition of lead-based paint activities under TSCA, Title IV, as well as numerous comments the Agency received from practitioners in the field regarding the tasks associated with lead-based paint activities.

The following represents the categories, and respective roles and responsibilities for each discipline as proposed in this regulation:

Target Housing and Public Buildings:

Inspector technicians would be responsible for: (1) Conducting an inspection for lead-based paint in target housing and in public buildings; (2) completing an inspection report; and (3) taking post-abatement soil and dust clearance samples.

Inspector/risk assessors would be responsible for all of the same activities as the inspector technician, as well as: (1) Conducting a risk assessment and other lead hazard assessment activities (such as screening a residence for lead hazards) in target housing and in public buildings; (2) completing a risk assessment report; (3) interpreting the results of inspections, and assessments; (4) identifying hazard control strategies to reduce or eliminate lead exposures; and (5) conducting post-abatement soil and dust clearance sampling and evaluating the results.

Workers would be responsible for: Conducting abatement activities in accordance with the procedures and requirements of the pre-abatement plan.

Supervisors would be responsible for: (1) Ensuring that abatement activities are conducted in accordance with regulatory requirements; (2) in projects involving the abatement of less than 10 units, developing a written pre-abatement plan and an abatement report for each assigned unit; (3) maintaining accessibility at all times when abatement activities are being conducted; and (4) ensuring completion of all abatement activities according to the standards of this regulation.

Planners/project designers would be responsible for: (1) Designing abatement projects for target housing buildings with 10 or more units, and all projects in public buildings; (2) preparation of a pre-abatement plan for all designed projects.

Commercial Buildings and Steel Structures:

Workers would be responsible for: Conducting deleading activities in accordance with the procedures and requirements of the deleading plan.

Supervisors would be responsible for: (1) Ensuring that deleading activities are conducted in accordance with regulatory requirements; (2) developing a written deleading plan and a post-abatement report for each assigned abatement project; (3) maintaining accessibility at all times when deleading activities are being conducted; (4) ensuring completion of all deleading activities according to the standards of this regulation; (5) identifying lead-based paint; and (6) completing all other reports required under this regulation. In the statute, activities associated with the inspection and assessment of lead-based paint are clustered together, and the Agency originally envisioned that it would develop one job discipline to both inspect for the presence of lead-based paint and to evaluate or assess any lead hazards.

In comments to the Agency, however, contractors performing work in large buildings (i.e., apartment complexes, schools, etc.) indicated that the costs associated with requirements mandating that individuals conducting inspections also be required to be trained to conduct risk assessments (as defined by the statute) were overly burdensome. Other commenters suggested utilizing individuals with less skill, education and training to simply collect the data needed by a "risk assessor" to evaluate lead hazards. Thus, in large settings the work could be done at a significantly lower cost while not compromising the quality of either the inspection or risk assessment. Based on these comments, the Agency is proposing the "inspector technician" discipline and the "inspector/risk assessor" discipline.

The establishment of two distinct disciplines — one as an entry level position, the "inspector technician," who would only conduct inspections; and another more advanced position, the "inspector/risk assessor," who would conduct risk assessments, but who also could conduct inspections — also will enable individuals to logically progress in their profession.

To foster this progression, the Agency is proposing to structure the inspector technician course so that it may be taken as a distinct course, separate from the inspector/risk assessor course. Upon passage of the inspector technician course, an individual would be able to secure certification as an inspector technician. Once certified as an inspector technician, an individual would be able to gain the work experience necessary to take the inspector/risk assessor course and to become certified as an inspector/risk assessor.

On the other hand, individuals that already possess the experience and/or education requirements to become certified as an inspector/risk assessor would take the inspector technician training course and the inspector/risk assessor training course together as one unit. Upon completion of the unit, individuals would become eligible for certification as an inspector/risk assessor.

By structuring the two courses in this way, the Agency also has avoided unnecessary duplication in training courses which individuals seeking to advance their careers sometimes encounter when taking additional training for other certifications. The content of the proposed inspector/risk assessor course supplements the inspector technician course and would not repeat any of the material from the inspector technician course.

Another example of this approach can be seen in the supervisor and planner/

project designer training courses. An individual could become certified as a supervisor for target housing and public buildings or as a planner/project designer for target housing and public buildings. However, to become certified as a planner/project designer, an individual would take the supervisor course and the planner/project designer course as one unit. Individuals seeking certification as a supervisor would only take the supervisor course, but could take the segment on planning/project design at a later date if they chose to pursue certification as a planner/project designer. Once again, the planner/project designer course would supplement the supervisor course and would not repeat any of the material from the supervisor course.

The Agency received comments from a number of interested parties in reference to the need to avoid duplicative training. In response, the Agency considered taking a modular approach by specifying a core curriculum that would be common to all the categories of individuals conducting lead-based paint activities. However, EPA's review of the training requirements indicates that the only knowledge and skill elements common to all the categories are: background information on lead, health effects, and regulatory background. Because these elements would only make up one-half day of training, the Agency believes it is not practical to break out these topics as a separate core curriculum. Consequently, the Agency has proposed separate courses for each discipline.

However, the Agency invites specific comments on its chosen approach and suggestions for outlining a modular approach that could be practicably implemented. Currently, the regulation requires a minimum amount of classroom time for each course (e.g. the inspector technician course shall last a minimum of 24 hours).

Although the Agency feels that the advantages of classroom training (opportunity for student teacher interaction, the ability of the training provider to update or customize the course material delivery at the time of the course) are significant, the Agency also is interested and requests comment on less traditional educational methods. These alternative methods could include the use of videotape or at-home study, for the delivery of the course material.

One such alternative would allow individuals to study course materials at home, and then spend one or two days at a training program facility to receive hands-on instruction and to take the course exam. This alternative would help to reduce travel expenses, may lower tuition costs, and would reduce the time that a trainee would have to miss work. The Agency is concerned however that non-classroom oriented instructional methods may not provide training of a quality equivalent to classroom instruction. Comments on the impact of quality resulting from alternative training methods taking into account the requirement for hands-on training, course test, and third party exam, are specifically sought as a part of this proposal.

C. Application Process

Proposed § 745.225(a) describes the process a training program must follow when applying for accreditation from an approving authority. "Approving authority" is defined in this proposed regulation to mean EPA or in the case of a State or Tribal program authorized by EPA under this proposal, the appropriate State agency or Tribal authority; an "accredited training program" means a training program that has been accredited by an approving authority to provide training for individuals engaged in lead-based paint activities.

The procedures in proposed § 745.225(a) would apply to all training programs seeking accreditation, regardless of when they began offering lead training. After the effective date of § 745.225, only accredited training programs may offer lead-based paint activity training for individuals seeking certification under proposed § 745.226.

For a training program to be accredited, the program would have to submit an application and all of the documents and information listed in proposed § 745.225(a)(2) to the approving authority. These documents would be used by the approving authority to determine if the training program meets the minimum requirements for accreditation of training programs listed in proposed § 745.225(b). Training programs also would be required to maintain copies of all documents submitted with their application.

Documents to be submitted as a part of the application would include a written statement signed by the training program manager that clearly demonstrates that the training program meets the requirements outlined in § 745.225(b). The training manager would be responsible for ensuring that the training program complies with all requirements in proposed § 745.225(b).

The training manager must also certify that all of the program's principal instructor(s) and work practice instructor(s) meet the specified experience requirements and ensure satisfactory performance of the program instructors.

Copies of the program's instructor/student manuals and the course agenda for each course must also be submitted with the application for accreditation. However, if the training program chooses to utilize EPA-developed model course materials, they would not be required to submit these materials, but only to maintain them. This exclusion is not intended to favor the use of EPA-developed materials, but to minimize the documentation that a training program must submit, and thus to minimize the paperwork burden generated by the application process.

Once the training program's application for accreditation is submitted, the approving authority would have 180 days to approve or disapprove the application. The approving authority may, at its discretion, work with training programs to address inadequacies in the request for accreditation. If a training program's application is disapproved, the program may reapply at any time. If a training program's application is approved, a certificate of accreditation would be sent to the applicant. A training program may offer basic full length training courses and refresher training courses in as many disciplines as it chooses, but would be required to seek accreditation for each discipline. However, a training program cannot apply for accreditation to teach a refresher course unless it is accredited to teach the full length basic course. A training program may apply for accreditation to teach both the full length basic training course and the refresher training courses simultaneously. Procedures to apply for accreditation to teach a refresher training course are discussed in unit V.F. of this preamble.

D. Minimum Requirements for the Accreditation of Training Programs

For a training program to obtain accreditation for any of the courses, the program would have to demonstrate it meets the requirements detailed in proposed § 745.225(b). The proposed requirements have been developed to ensure that all accredited training programs are offering similar high quality training courses, regardless of where the training programs are located.

The training program would have to employ a qualified training manager, principal instructor(s), and work practice instructor(s) and would have the necessary facilities to teach both the lecture and hands-on portion of the course(s) for which the program would

be seeking accreditation. Proposed § 745.225(b)(1), (b)(2), and (b)(3) lists the education and experience requirements that the Agency believes training managers, principal instructors, and work practice instructors would have to possess to ensure that training is conducted properly. Documents that would serve as a proof of these educational requirements are identified in proposed § 745.225(b)(5). The Agency invites specific comment on the educational and work experience requirements it is proposing for training program managers and course instructors.

The training manager is responsible for the overall quality of the training program from the qualifications of the instructors to the adequacy of the training facility. They are responsible for certifying, in the program application, that the program meets all of the accreditation requirements of this regulation, and for maintaining the program at that level.

The principal instructor is responsible for the organization, delivery and oversight of all course materials. In this capacity the principal instructor has the flexibility to bring in experts (e.g. doctors or lawyers) to teach selected portions of the training course (e.g., health effects of lead or regulatory requirements). These experts, termed "guest instructors," might not be professional trainers or practitioners in the lead-based paint activities arena, but must maintain specialized knowledge of a particular course topic.

As a part of the educational requirements for training managers, and principal and work practice instructors, the Agency has proposed a 40–hour train-the-trainer course. The Agency chose 40 hours based on comments it has received from a number of interested parties. On the other hand, several parties have expressed concern to the Agency that 40 hours is an extensive period of time for a train-the-trainer course. Comments on this issue are invited, as well as the submission of supplemental information on the utility of a 40–hour course.

Proposed § 745.225(c) of the regulatory text lists the minimum curriculum requirements for each course. The minimum requirements are a list of topics that would be covered in each of the courses, as well as the specified skill areas where hands-on training would occur. There would be minimum curriculum requirements for inspector technicians, inspector/risk assessors, supervisors, planner/project designers, and workers in target housing and public buildings; and supervisors and workers in commercial buildings and superstructures. The training programs would also provide instruction in the standards in proposed § 745.228 for conducting lead-based paint activities. The course topics that must include a hands-on exercise are noted in the proposed rule with an asterisk.

Each training program's course would have to meet or exceed the appropriate minimum total training hour and hands-on training requirements as stated in proposed § 745.225(b)(7) of the regulatory text. The hands-on training hours are included in the total number of training hours. The total training hours and hands-on training hour requirements were developed by the Agency based on its experience in developing other training programs for asbestos, pesticides, and radon. In defining the total training hour requirements, the Agency also considered information it has received from the EPA-sponsored Regional Lead Training Centers, private training providers, and other university-based training providers, labor organizations, and other interested parties. The Agency is requesting that individuals who have data that would support alternative minimum training hour requirements submit that information during the comment period for consideration.

To ensure trainee competency and proficiency, the accredited training program would have to administer a course test at the end of the course and conduct a hands-on skills assessment. The hands-on skills assessment would be an evaluation of the effectiveness of the hands-on training which should test the ability of the trainees to demonstrate satisfactory performance of all the specified work practices and procedures described in proposed § 745.225(c). Both the hands-on assessment and the course test would have to be successfully completed to pass the course.

To ensure the quality of the training programs, programs would have to develop, implement, and maintain a quality control plan and submit the plan to the approving authority for consideration. The quality control plan should be developed so as to maintain and improve the quality of the training program over time. The plan would address procedures for periodic revision of training materials and the course test to reflect innovations in the field, and procedures to periodically review instructor competency.

An example of why the provisions for quality control and periodic revision of course materials are important is seen in the inspector/risk assessor course. The procedures outlined in proposed § 745.228(b) and (e) of the regulatory text are critical for the conduct of risk assessments in target housing and public buildings. However, risk assessment, or determining the nature or severity of a lead-based paint hazard is an evolving field where technologies are advancing at rapid pace. The skills needed for assessing lead-based paint hazards would be addressed in the inspector/risk assessor course, so provisions for quality control and the periodic revision of course materials to include state-of-the-art advances are of the utmost importance to ensure professional competence.

E. Course Test

Proposed § 745.225(b)(8) outlines the requirements for the course test that would be administered by training programs at the completion of each course. The course test would be representative of the topics taught in the course. Although the Agency expects most training providers to develop and administer a written course test, EPA is requesting comment on the need to make special provisions for individuals who cannot read English, or who have a low reading comprehension. For example, training providers may want to develop a course test in a foreign language, or to administer the test orally.

Regardless of how it is administered, training participants would be required to pass the course test by answering correctly at least 70 percent of the test questions. Upon successfully passing the course test and the hands-on assessment, individuals would receive a course completion certificate. Passage of the course test and hands-on assessment would demonstrate that the trainee has been properly trained.

F. Minimum Requirements for the Accreditation of Refresher Training Programs

Proposed § 745.225(d) outlines the minimum requirements that would be required for the accreditation of refresher training programs. These requirements would ensure that all accredited training programs would offer similar high quality refresher training courses.

Refresher training would address the following topics: An overview of key safety practices; an update on current laws and regulations (Federal, State, and local); and an update on new technologies. The course would be a minimum of 7 training hours and would include a course test to be administered at the end of the course.

The minimum course requirements for a refresher training course would

serve to update an individual's knowledge and skills so they can effectively and safely continue to practice in the field.

In addition to its application, a training program seeking accreditation to teach a refresher course(s) would submit to the approving authority the materials to be used for the course. This information would be submitted for each discipline for which the program will be seeking accreditation. The approving authority would have 45 days to approve or disapprove the request for accreditation and to issue a certificate of accreditation. The approving authority may, at its discretion, work with training programs to address inadequacies identified in the request for accreditation. If a training program's application is disapproved, the program would be able to reapply at any time.

A training program may offer refresher training courses in as many disciplines as it chooses, but would be required to seek accreditation for each discipline. However, a training program cannot apply for accreditation to teach a refresher course unless it is accredited to teach the full length basic course. A training program may apply for accreditation to teach both refresher training courses and full length basic training courses simultaneously. Procedures to apply for accreditation to teach a full length basic training course are discussed in paragraph C of this Unit in the preamble.

G. Re-accreditation of Training Programs

To ensure that accredited training programs continue to offer high quality training, the Agency has proposed requirements at § 745.225(e) for the re-accreditation of training programs. An accredited training program would have to be re-accredited every 3 years by the approving authority. To qualify for this re-accreditation, an audit of the training program by the approving authority may be performed at the approving authority's discretion.

The application for re-accreditation shall include a list of courses for which the training program is applying to teach and a description of any changes or updates to the training facility or equipment.

In addition to the application, the training program manager would sign a statement certifying that: (1) The course materials meet the applicable curricula requirements in proposed § 745.225(c); (2) the training manager, principal instructors, and work practice instructors meet the qualifications in proposed § 745.225(b)(1), (b)(2), and (b)(3); (3) the training program complies at all times with all requirements in proposed § 745.225(b); (4) the quality control program meets the requirements described in proposed § 745.225(b)(11); and (5) that the recordkeeping requirements in proposed § 745.225(h) are being followed.

The training program would submit an application for re-accreditation at least 180 days prior to expiration of its existing accreditation. If a training program does not submit its application for re-accreditation in time, EPA would not be able to guarantee that the application would be processed before the applicant's accreditation expires.

H. Suspension, Revocation, and Modification of Accredited Training Programs

Proposed § 745.225(f) contains the procedures that the approving authority would follow to suspend, revoke, or modify a training program's accreditation. The approving authority may, generally after notice and opportunity for a hearing, suspend, revoke, or modify a training program's accreditation if a training program or its training manager, or other supervisor has committed any of the acts identified in proposed § 745.225(f).

I. Procedures for Suspension, Revocation, and Modification of Training Program Accreditation

Proposed § 745.225(g) of the regulatory text describes the procedures that the approving authority would follow if it decides to suspend, revoke, or modify the accreditation of a training program. These include procedures for notifying the program; for conducting the hearing, if requested; and for immediate action to suspend the accreditation of any program.

J. Training Program Recordkeeping and Reporting Requirements

Proposed § 745.225(h) of the regulatory text outlines the recordkeeping and reporting requirements for accredited training programs. The recordkeeping requirements would ensure that the approving authority could obtain the information necessary to audit programs and ensure that approved training programs are in compliance with all applicable standards.

The training program would maintain, and make available to the approving authority, if requested, all documents submitted to the approving authority as listed in proposed § 745.225(a)(ii). In addition the training program would maintain all documents specified in proposed § 745.225(b)(5) that demonstrate the qualifications of the training manager, principal instructors, and work practice instructors. Student files also would be maintained and would contain at a minimum, the results of the student's hands-on skills assessment and course test, and a copy of their course completion certificate. The training program would retain these records for a minimum of 3 years and 6 months at the location and address specified on the training program accreditation application. Training programs would notify the approving authority 30 days prior to relocating its business or transferring the records.

K. Training and Other Regulatory Requirements Applicable to Lead-Based Paint Abatement Professionals Under the Resource Conservation and Recovery Act (RCRA)

In addition to the training and recordkeeping requirements of this proposed rule, there are other regulations that may apply to individuals engaged in lead-based paint activities. Some lead-based paint activities may result in the generation of hazardous waste as defined under the Resource Conservation and Recovery Act (RCRA). For convenience, this paragraph includes references to the *Code of Federal Regulations* (CFR) for applicable RCRA hazardous waste generator requirements (see 40 CFR part 262), as well as references to training and recordkeeping requirements. References to training and recordkeeping requirements are specified as needed in the following discussion.

1. *Training requirements.* Individuals involved in projects that generate more than 100 kilograms/month of hazardous waste must be instructed in hazardous waste determination and management procedures relevant to their job descriptions.

There are also RCRA training requirements cited in 40 CFR 265.16 which are applicable to both large quantity generators of hazardous waste (more than 1,000 kilograms/month of hazardous waste are generated) and operators of the RCRA treatment, storage, and disposal facilities. Small quantity generators (more than 100 kilograms/month but less than 1,000 kilograms/month of hazardous waste are generated) must comply with the training requirements in 40 CFR 262.34(d). Individuals engaged in lead-based paint activities must be familiar with the requirements cited in 40 CFR 265.16(b), (c), and (d)(1) through (d)(4) and follow them when handling lead-based paint abatement waste.

2. *Maintaining training records.* RCRA requires that training records cited in 40

CFR 265.16(d)(1) through (d)(4) be maintained by hazardous waste generators to show that a generator of hazardous waste who generates greater than 1,000 kilograms/month of hazardous waste (see 40 CFR 261.3 and 261.10 through 35) has completed the RCRA training requirements. The abatement workers' RCRA training records must be maintained on-site where abatement work will be performed.

VI. Certification of Individuals and Firms Engaged in Lead-Based Paint Activities

A. Introduction

Section 402(a)(1) of Title IV of TSCA requires EPA to promulgate regulations to ensure, among other items, that contractors engaged inlead-based paint activities are certified. EPA interprets this requirement to apply to individuals, as well as firms, engaged in lead-based paint activities.

The term "certified contractor," as defined in section 1004 of Title X, includes (1) a contractor, inspector or supervisor who has completed a training program certified by EPA and who has met any other requirements for certification established by EPA or who has been certified by any State through a program which has been found by EPA to be at least as protective as the Federal certification program; and (2) workers and designers who have fully met training requirements established by EPA or an approved State program.

Accordingly, EPA has determined that an individual performing lead-based paint activities as an inspector, supervisor, worker or designer is subject to regulations as a "certified contractor" pursuant to section 402. Although "risk assessor" was not expressly listed in the definition of "certified contractor" in section 1004 of Title X, the function of a risk assessor — to prepare a risk assessment — is defined as a lead-based paint activity under TSCA Title IV, section 402(b). Consequently the Agency is proposing to define a risk assessor as a "contractor" in the same way that inspectors and supervisors are defined as contractors.

At the same time the Agency recognizes that the term "contractor" may also be used to describe a firm or a company, rather than an individual. Consequently, the Agency is proposing regulations governing the activities of firms, as well as individuals engaged in lead-based paint activities.

Proposed § 745.226(f) of the regulatory text identifies the requirements firms would need to meet to obtain certification. Under these requirements a firm engaged in lead-based paint activities would submit to the approving authority a letter certifying that the firm will only employ certified employees to conduct lead-based paint activities and that the firm will adhere to the standards and recordkeeping requirements in proposed § 745.228.

To ensure that individuals are adequately trained and certified the Agency has developed two distinct training and certification programs. One of the programs has been designed for individuals engaged in lead-based paint activities as workers and project planners/designers. The other program has been designed for individuals engaged in lead-based paint activities as inspectors, supervisors and risk assessors. These certification programs are discussed in detail in units VI.B. and C. of this preamble.

Based on comments received during the development of this proposed rule, the Agency is proposing the use of a national certification exam to be included as a part of the certification process for inspector technicians, inspector/risk assessors and supervisors. The national exam is included in the certification requirements described in § 745.226(b) for inspector technicians, inspector/risk assessors and supervisors.

The Agency believes that the administration of a certification exam would significantly contribute to the Agency's efforts to ensure that individuals are adequately trained and would encourage a nationally consistent approach to the development of a trained and certified workforce. Options for the development of a national exam and the purpose of the exam are discussed in more detail later in units VI.D. and E. of this preamble.

Proposed § 745.226 of the regulatory text has also been developed as a model for States to use when establishing their own certification programs in the context of applying for authorization under section 404 of Title IV of TSCA.

Although this proposed rule specifies certification requirements as well as standards for all individuals engaged in lead-based paint activities, it does not contain a requirement that particular activities be undertaken in any specific sequence. For example, there will be no requirement to conduct an inspection if, due to the availability of historical information, lead-based paint is presumed to exist and a decision to abate without an inspection has been made. Under such circumstances, the abatement may proceed using certified individuals without the conduct of a prior inspection.

Only certified individuals may conduct the lead-based paint activities defined in this proposed regulation. If a homeowner decides to have an inspection (as defined by this proposed regulation) conducted, the individual providing the inspection service must be certified. However, any lead related work that does not meet the definition of a lead-based paint activity, as identified in section 402(b)(1) and (2) and as defined by this regulation, need not be conducted by a certified individual. For instance, during a kitchen remodelling project a homeowner may decide to have the paint on only one wall in the kitchen tested for lead, by a non-certified individual or firm because such limited testing is not an "inspection" as that term is defined by the regulation. However, no individual or firm may perform or even offer to perform any lead-based activity, e.g. inspection, risk assessment, or abatement, as defined in this part, unless certified according to the procedures found at proposed § 745.226.

B. Inspector Technician, Inspector/Risk Assessor, or Supervisor Certification

Individuals wishing to become certified by the approving authority as an inspector technician, an inspector/risk assessor, or a supervisor would have to: (1) Successfully complete the appropriate training course offered by an accredited training program and secure a course completion certificate; (2) meet the appropriate experience and/or education requirements and; (3) pass the certification examination recognized by the approving authority.

To be eligible to take the certification examination, an individual would first have to present the required training course completion certificate and documentation of the appropriate education/experience prerequisites to an official of the examination administering body. Documents that would be recognized as proof of these prerequisites are listed in proposed § 745.226(b).

Experience and/or education requirements are proposed in the regulatory text for inspector/risk assessors for target housing and public buildings, supervisors for target housing and public buildings, and supervisors for commercial buildings and superstructures. There are no experience and/or education requirements proposed for inspector technicians because the EPA believes that this would present an unnecessary barrier to entry into this field.

Many interested parties commented that the work experience and

educational qualifications of inspector/risk assessors and supervisors should be substitutable. Therefore, the Agency, in proposing education/experience requirements, took into account its experience in developing training programs in the past (e.g., asbestos) and comments provided by a number of interested parties, such as the Regional Lead Training Centers, labor organizations, advocacy organizations, and trade organizations. Based on information received, the experience and education requirements for inspector/risk assessors and supervisors were developed by the Agency in an effort to allow individuals to substitute qualifying experience for education and visa versa. These requirements were developed to avoid excluding individuals whose experience might warrant qualification to become certified but who would not qualify on the basis of the education requirements alone. Proposed § 745.226(b)(1) of the regulatorytext describes the education/experience requirements for inspector/risk assessors and supervisors.

The Agency specifically requests comment on the education and/or experience requirements it is proposing for inspector/risk assessors and supervisors, and its decision not to propose any education and/or experience requirements for inspector technicians. It also is seeking comment on the administration of a national certification examination as discussed in units VI.D. and E. of this preamble.

C. Worker and Planner/Project Designer Certification

Individuals wishing to become certified as workers in target housing and public buildings or commercial buildings and superstructures or planner/project designers in target housing and public buildings would have to successfully complete and receive a course completion certificate in the appropriate discipline from an accredited training program. There are no experience and/or education prerequisites for workers or planner/project designers, nor would these job disciplines be required to take a national certification examination. This decision is based on EPA's understanding of the definition of "certified contractor" in section 1004 of Title X, which only requires training as a precondition to certification for workers and planner/project designers.

The training course completion certificate issued to a worker or planner/project designer would serve as an interim training certificate for 6 months. Within 6 months the individual would submit a valid copy of their course completion certificate to the approving authority. The approving authority would then issue a final certification to each worker and project designer. This certification would be valid for 3 years. An individual would have to be re-certified by the approving authority before the certification expires. Training programs may wish to assist trainees in notifying the approving authority of their eligibility for certification.

D. Certification Examination

Proposed § 745.226(b) of the regulatory text describes the certification requirements for inspector technicians, inspector/risk assessors, and supervisors. Under these requirements, an individual would successfully complete the appropriate training course and secure the course completion certificate, and meet the appropriate education/experience requirements. After obtaining a course completion certificate and meeting these requirements, an individual would be ready to take the certification examination.

The certification examination is a key component of the Agency's certification program, especially for inspector technicians, inspector/risk assessors, and supervisors. While there would be a required test at the end of each training course, the certification examination would serve as a neutral or third party examination of the applicant's proficiency in the appropriate training discipline. A neutral or third party would administer the examination in such a way that the validity and security of the examination are maintained. The examination would serve to ensure that each individual who will be certified under this program would have a common level of knowledge and understanding in their particular discipline. It is the Agency's belief that administration of a neutral or third party examination would encourage States to enter into reciprocal certification arrangements with other States nationwide.

The examination itself would not be developed as part of this proposed regulation, but would be developed separately under the auspices of EPA, according to guidelines discussed in paragraph E of this Unit in the preamble.

It is anticipated that the approving authority may not always be able to offer the certification examination immediately after an individual has received their course completion certificate. To allow individuals to begin work, the course completion certificate would also serve as an interim certification until evidence of successfully passing the next available certification examination is provided. This interim certification would be valid for up to 6 months. If an individual did not pass the certification examination and receive their certificate within this 6–month period, the individual would have to retake the appropriate course before reapplying for certification from the approving authority.

After passing the certification examination and meeting the education/experience prerequisites, an individual would be issued a certificate by the approving authority. This certification would be valid for 3 years. There would be separate certification examinations offered for each discipline.

EPA is examining various options for the development and administration of the certification examination. One option is for EPA or a State to work with a competent independent organization to develop and/or administer the certification examinations based on the guidelines discussed below. A second option is to have authorized State programs develop and administer their own certification examinations according to the Certification Examination Guidelines. A third option is for EPA to develop and/or administer the certification examinations. Comment is invited on these options and on the feasibility of an independent organization administering the examination. The goal of the certification examination process is to give each State the flexibility it desires in fashioning its certification program, while at the same time ensuring a consistent national level of competence in the lead-based paint activities workforce.

E. Certification Examination Criterion

The following are criterion that, although not a part of this proposed rule, EPA expects will be followed when developing the certification examination:

1. Subject matter experts (SMEs) will be consulted throughout the development and early evaluation process.

2. This consultation will be done using oral interviews and written questionnaires devised by the SMEs in concert with testing development professionals. A job or task analysis will be performed for each discipline. This analysis will be used in the development of the initial test questions and the overall development of the topical format of the examinations, including the amount or percentage of questions for each topic covered on a particular examination.

3. A readability analysis of the test questions will be performed. Based on this evaluation, changes will be made as necessary in the construction of the test questions.

4. Complete psychometric evaluation techniques will be utilized in the initial construction of the tests.

5. A cut score workshop will be conducted to review each question in the item bank (or test bank). The SME's shall be used to evaluate each question. They would establish a level of difficulty for each question, as well as the percentage of each topic to be covered on the test. Based on their knowledge of the industry, the SMEs will provide an estimate of the number of candidates who would successfully complete each question. Once these items have been established, an appropriate, industry accepted procedure will be used to set a minimum passing (or "cut") score for each examination.

6. Continuous psychometric evaluation of the test questions will be used. The test questions will be periodically revised and updated through the collection of statistics regarding the performance of candidates on each question.

EPA recognizes that States may wish to impose additional testing requirements on candidates. This practice is acceptable as long as the test questions used by a State do not duplicate the topics covered in the standardized certification examination, but rather are specific to State laws, regulations, and work practice requirements.

F. Certification Based on Prior Training

EPA is aware that when the regulation becomes effective, there will be many individuals who have, over the past several years, already received training and have been working in the lead-based paint abatement field. While many of these individuals may not believe that any additional training will be necessary, the Agency has a responsibility to ensure that individuals engaged in lead-based paint activities are properly trained. The Agency does not, however, wish to unnecessarily burden individuals, some of whom already have years of experience in this field.

Recognizing this situation, the Agency has proposed at § 745.226(d) a procedure for certifying some of these individuals under a reduced set of requirements. Anyone who has received lead-based paint activities training between October 1, 1990, and the effective date of the rule may be eligible for certification under these proposed procedures. To become eligible for certification based on prior training, all individuals would have to show proof of training received after October 1, 1990, and that such training included a curricula similar to the requirements in § 745.225(c).

Inspector/risk assessors, and supervisors would also have to document that they meet the education and/or experience requirements listed in proposed § 745.226(b)(1). These individuals would also have to successfully complete a refresher training course and pass the national certification examination for the appropriate discipline.

Workers and planner/project designers seeking certification under these procedures would have to successfully complete a refresher training course.

In considering grandfathering, the Agency invites comment on what criteria should be used to compare prior training with the training described in proposed § 745.225(c). The Agency believes that some evaluation of the adequacy of previous training will be necessary to ensure that individuals are properly trained.

The Agency has chosen the date of October 1, 1990, as the proposed cutoff for prior training because this is the date the Department of Housing and Urban Development's (HUD) "Interim Guidelines for Hazard Identification and Abatement of Lead-Based Paint in Public and Indian Housing" were issued. These guidelines were the most comprehensive and accurate information on lead-based paint inspection and abatement issued up to that time. EPA believes that after October 1, 1990, the HUD guidelines were widely distributed to training programs and that many individuals received training based on these guidelines. The Agency requests specific comment on using the HUD Guidelines as a rationale and the October 1, 1990 date as the cutoff point for allowing certification based on prior training.

As of July 1994, 3,245 copies of the guidelines and 231 copies of EPA's lead inspector training course, based substantially on the HUD Guidelines, have been sold. Additionally, as of September 1993, 306 copies of EPA's model lead abatement training course for supervisors and contractors, also substantially based on the HUD guidelines, had been sold. All of these materials were sold to the general public through the HUD contractor-operated distribution center, HUD User.

Since the establishment of EPA-supported Regional Lead Training Centers (RLTC) in March 1992, the Centers have trained approximately 2,000 individuals in the Supervisor/Contractor Course (Ref. 8) and approximately 2,200 individuals have received training in the RLTC's lead inspector training course (Ref. 9). The RLTCs use EPA's model courses as the basis for their training classes. Again, EPA's model courses draw substantially from the HUD Guidelines.

Under the proposed rules, individuals would have up to 6 months after the effective date of proposed § 745.225 to apply for certification under these prior training procedures. After that date, all individuals wishing to obtain certification would do so under the process outlined in proposed § 745.226(b) and (c) of the regulatory text. The Agency recognizes that 6 months after § 745.225 becomes effective may not seem like an adequate amount of time to apply for certification under the reduced set of requirements detailed in proposed § 745.226(d). However, when it is considered that proposed § 745.225 does not become effective until 2 years and 6 months after the rule (in its entirety) is issued or "effective," the Agency believes that individuals will have plenty of time to prepare to apply for certification under the procedures in § 745.226(d). The Agency requests comment on the procedures it is proposing for a prior certification.

G. Re-certification

The Agency is aware that the lead-based paint activities field is evolving quickly in both inspection and abatement technology. Given this, under the proposed rule, refresher training would be required every 3 years. This requirement would be enforced by mandating that all certified individuals be recertified every 3 years. The Agency has chosen 3 years as the amount of time for re-certification for several reasons. EPA believes re-certification of individuals every 1 or 2 years would be too burdensome. But, it also believes that waiting longer than 3 years would not allow individuals to receive timely updates on innovations and technological advances in the lead inspection and abatement field or on new regulatory requirements.

To become re-certified, an individual would successfully complete an accredited 1–day refresher training course specific to the discipline in which the individual seeks to be recertified through an accredited training program; pass the refresher course test, and submit a refresher course completion certificate to the approving authority.

H. Suspension, Revocation, and Modification of Certification of Individuals Engaged in Lead-Based Paint Activities

Pursuant to section 402(a) of TSCA, the approving authority would be able to, after notice and opportunity for a hearing, suspend, revoke, or modify an individual's certification if an individual has committed any one of the acts listed in § 745.226(g) of the proposed regulatory text. In addition, the approving authority would be able to suspend, revoke, or modify the certification of individuals who have been subject to a final order imposing a civil penalty or a criminal conviction for engaging in a prohibited act under section 15 or section 409 of TSCA.

Furthermore, any individual who either: (1) Obtained certification through fraudulent representation or means, or (2) obtained certification from a training program that is not accredited to offer training is not considered certified for purposes of TSCA Title IV. It would be considered a violation of TSCA, as well as any other applicable provision of law, for any such individual to conduct any lead-based paint activities requiring certification.

I. Certification of Firms Engaged in Lead-Based Paint Activities

Proposed § 745.226(f) of the regulatory text outlines procedures for the certification of firms. All firms acting as contractors or conducting lead-based paint activities would have to be certified by the approving authority. To become certified, a firm would submit a letter to the approving authority certifying that the firm will only employ certified employees to conduct lead-based paint activities and that the firm will follow the standards and recordkeeping requirements in proposed § 745.228.

The Agency believes the certification of firms is necessary to ensure the use of a certified workforce and compliance with recordkeeping requirements. A certified firm would present the approving authority with a more manageable point of contact for administration and enforcement, as opposed to the Agency attempting to monitor the activities of every worker involved in lead-based paint activities. Additionally, the provisions for the identification of qualified firms would provide a source of information for the public to identify firms qualified to conduct lead-based paint activities in target housing, public and commercial buildings, and superstructures. Additionally, the required certification mechanism would also provide the Agency with a mechanism for notifying contractors of new technologies and regulatory requirements in an effective and timely manner. A certified firm would follow the recordkeeping standards outlined in § 745.228 of the proposed regulatory text.

J. Suspension, Revocation, and Modification of Certification of Firms Engaged in Lead-Based Paint Activities

The approving authority would be able to, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certificate if a firm has committed any of the acts listed in § 745.226(h) of the proposed regulatory text. In addition, the approving authority may suspend, revoke, or modify the certification of firms that have been subject to a final order imposing a civil penalty or a criminal conviction for engaging in a prohibited act under section 15 or section 409 of TSCA.

Furthermore any firm which either: (1) Obtained certification through fraudulent representation or means, or (2) fails to obtain a certificate from the approving Authority is not certified for purposes of TSCA Title IV. It shall be considered a violation of TSCA as well as any other applicable provision of law, for any such firm to conduct any lead-based paint activities requiring certification.

K. Procedures for Suspension, Revocation, or Modification of Certification of Individuals or Firms

Proposed § 745.226(h) outlines the procedures to be followed if the approving authority decides to suspend, revoke or modify the certification of any individual or firm. These include procedures for the notification of the individual or firm; the conduct of the hearing, if requested; and the procedures for immediate action to suspend the certification of any individual or firm.

VII. Standards for Conducting Lead-Based Paint Activities

A. Introduction

Section 402(b) of TSCA requires EPA to develop training and certification requirements for individuals and contractors engaged in lead-based paint activities. The statute also states that such regulations shall contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

In this proposed rule, EPA has divided the standards for lead-based paint activities into three separate categories with lead identification and control disciplines specified for each category. These categories include target housing, public buildings, and commercial buildings and superstructures. In target housing, the standards cover inspection, risk assessment, and lead abatement. The second set of standards, for public buildings, covers the identification of lead-based paint and lead-containing materials, risk assessment, abatement, and demolition. The final set of standards are for identification, deleading, and demolition in commercial buildings and superstructures.

Although this proposed rule specifies certification requirements as well as standards for all individuals engaged in lead-based paint activities, it does not contain a requirement that particular activities be undertaken in any specific sequence. There will be no requirement to conduct an inspection if, due to the availability of historical information, lead-based paint is presumed to exist and a decision to abate without an inspection has been made. Under such circumstances, the abatement may proceed using certified individuals without the conduct of a prior inspection.

B. Background Documents

The statutory timeframe for developing final standards for conducting lead-based paint activities under section 402(a) did not allow sufficient time to conduct extensive new studies and develop entirely new standards for the broad range of lead-based paint activities as defined in this proposed rule. However, the Agency was able to draw on a body of existing information and research in the development of these standards. In addition, during the development of this proposal, the Agency received written input from a broad range of individuals and groups who are currently working in the fields that conduct lead-based paint activities.

One example of such resource material is the Interim HUD Lead-Based Paint Guidelines. The Guidelines, published in 1990, is a comprehensive document that covers all aspects of lead-based paint inspection and abatement activities. The Guidelines provided an invaluable starting point for the development of EPA's inspection, risk assessment, and abatement standards. The Guidelines are the only nationally recognized blueprint for conducting safe and effective abatement in target housing. While State and regional requirements exist for methodologies for some lead-based paint activities, no other set of guidelines has been used as extensively as the HUD Guidelines.

Section 1017 of Title X requires that HUD issue new guidelines for risk assessment, inspection, interim controls, and abatement. These guidelines will be entitled *Guidelines for the Evaluation and Reduction of Lead-Based Paint Hazards in Housing.* Leading experts in the field of lead-based paint inspection, risk assessment, and abatement have been consulted by HUD in developing these new guidelines, including lead-based paint abatement trainers and abatement professionals, as well as government officials from the National Institute of Occupational Safety and Health (NIOSH), the Centers for Disease Control and Prevention (CDCP), EPA and HUD.

Since the development of the revised guidelines paralleled the development of this proposed rule, the Agency was able to consult with HUD throughout the rule development process in an attempt to achieve consistency between the two documents. The Agency will, when it is available, include a copy of the new HUD guidelines in the public docket for this proposed rule.

C. Inspection for Target Housing

The objective of an inspection is to determine, and then report, the existence of lead-based paint in residential dwellings through a surface-by-surface investigation. The data collection and reporting standards specified in § 745.228(a) must be followed when conducting an inspection. Because the data collection and reporting standards are crucial to the accuracy of an inspection, an inspection may only be conducted by an individual certified as either an inspector technician or an inspector/risk assessor. An inspection is, by definition, intended to provide a comprehensive inventory of all lead-based paint in a dwelling unit. Consistent with this definition, the inspection report will provide a detailed evaluation of the presence of lead in all paint within the unit.

EPA is proposing to define a unit as a room, or connected group of rooms, used or intended to be used by a single tenant or owner. Section 745.228(a)(2)(ii) of the proposed regulatory text states that component surfaces with distinct painting histories in every unit must be tested. This effectively means that every unique component within a room that has a painted surface that has been deemed to have such a painting history by the inspector technician or inspector/risk assessor, would have to be tested.

The requirement that every unique painted surface be tested is consistent with the Title X definition of an inspection involving a "surface-by-surface investigation." An inspection is intended to provide detailed information on the presence of lead in all paint in a dwelling unit, and the procedures in this proposed standard are intended to provide a framework to obtain this information.

The inspection standards reflect the Agency's preliminary decision not to provide detailed instruction on how to perform specific lead-based paint identification tasks, for instance, taking a paint chip sample or operating an XRF instrument, but instead to assure that analysis information is obtained and maintained as part of the recordkeeping requirements. Because the actual methods and techniques used to determine the presence of lead-based paint (the test methods) are constantly evolving, and improvements in technology are expected to continue, the standards contained in this proposed rule do not specify the technology to be utilized for analysis, but do require documented methodologies which incorporate adequate quality control procedures.

Examples of analytical technologies capable of lead-based paint testing include field portable XRF and, laboratory analysis of paint chip samples by atomic absorption spectroscopy (AAS) and inductively coupled plasma atomic emission spectroscopy (ICP). EPA does not intend, in this regulation, to specify in detail the procedures for the analysis of paint for lead content. The new HUD guidelines, provide comprehensive guidance on both XRF sampling, and laboratory analytical methods, and the procedures in the guidelines should be followed when conducting lead-based paint testing. The Agency is considering the need for promulgating detailed regulatory requirements for lead-based paint testing and requests comment on the need for such an enforceable testing regulation.

The proposed standards do require that any environmental laboratory analysis to determine the lead content in paint, dust, and soil, be done by only those laboratories recognized by the Agency as being capable of performing these activities.

X-ray fluorescence (XRF) spectroscopy is widely used as a field inspection devise. The accumulated experience in use of XRF instruments has provided anecdotal evidence that they are subject to unexplained variances in performance. To date, there has been little comprehensive evaluation of the performance of XRFs under actual field conditions. Because of the questions raised concerning XRFs performance, EPA is conducting a field study of lead-based paint measurement technology. Results of this study will be used to shape lead-based paint testing guidelines which will be reflected in the new HUD guidelines and disseminated as guidance.

While methodologies for determining the presence of lead-based paint may vary, the inspection standards would require that the inspector technician or inspector/risk assessor prepare an inspection report that would detail the findings of their inspection and the methods used during the inspection. The inspector technician or inspector/risk assessor would have to adhere to the reporting requirements listed in proposed § 745.228(a)(6) of the regulatory text. Accurate completion of the report would be the enforceable component of the inspection standards.

The inspection report would serve as a guide for the inspector technician or inspector/risk assessor to ensure that all of the necessary information will be obtained during an inspection. An example of an inspection report can be found in the HUD guidelines.

An inspection report would have to be completed for each unit inspected. Upon completion of the testing, an inspection report would be written and would include all information required in § 745.228(a)(6) of the proposed regulatory text. The inspection report would be retained by the owner of the residence or building and the certified firm that conducted the inspection for a period of 3 years. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 requires that by October 1994, the Agency and HUD develop a regulation for the disclosure of lead-based paint hazards in target housing which will be offered for sale or lease. The inspection report would be subject to the disclosure and recordkeeping requirements of the section 1018 regulation.

D. Risk Assessment for Target Housing

The Federal government's commonly held definition of risk assessment defines the health effects of exposure to hazardous materials to individuals or populations by conducting a hazard identification, a dose-response assessment, an exposure assessment, and a risk characterization (*Risk Assessment in the Federal Government: Managing the Process, National Academy Press*) (Ref. 1). This form of risk assessment focuses on a quantitative analysis of risk to human health and does not recommend options for the management of the risk. Risk assessment as defined by TSCA Title IV, differs from this traditional concept in

that the inspector/risk assessor is relied upon to not only identify lead-based paint hazards, but to also recommend options for the management of these hazards.

Section 401(16) of TSCA provides that the objective of a risk assessment is to determine, and then report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings through an on-site investigation. This definition is based on the risk assessment protocols developed by HUD and the Housing Authority Risk Retention Group (HUD/HARRG) as mandated by amendments to the Housing and Community Development Act of 1987, the Lead-Based Paint Poisoning Prevention Act (Pub. L. 100–242).

Under the proposed rule, a risk assessment, including the risk assessment report, may only be conducted by an individual certified as an inspector/risk assessor. However, an inspector technician may, assist a certified inspector/risk assessor by taking paint, soil, and dust samples.

The Agency views the role of the inspector/risk assessor as pivotal in reducing risks associated with lead-based paint. The certified inspector/risk assessor will be a trained specialist equipped with the requisite professional credentials needed to evaluate risks associated with lead-based paint. The Agency envisions that a certified inspector/risk assessor would be qualified to make a competent, and rational assessment of the location and severity of lead-based paint hazards. The procedures outlined in proposed § 745.228(b) of the regulatory text provide a framework for the collection of risk assessment data. These procedures were developed on the premise that the background and required training of a professional inspector/risk assessor would enable the inspector/risk assessor to identify risks associated with lead-based paint hazards and to develop options for actions to eliminate hazards. The required training would, through the accreditation process outlined in this regulation, include the best scientific information available on characterizing hazardous levels of lead in paint, soil, and dust.

As stated earlier in this preamble, the Agency is currently developing criteria pursuant to section 403 of TSCA for the identification of lead hazards in soil, dust, and paint to facilitate the risk assessment decision making process. When promulgated, the determinations made under the section 403 regulation, and associated guidance, will be widely disseminated by the Agency, and will be a required element of the training course curricula under this regulation.

The standards in this regulation are intended to apply to individual residential dwelling units, whether in multi-unit residential dwelling or in single-family housing. The procedures for determining which units are to be assessed within a multiunit dwelling are not included in these standards. This decision should be made by the building owner or housing authority in consultation with the inspector/risk assessor.

The first step of a risk assessment is to have the risk assessor survey the unit or dwelling to evaluate its overall condition. In buildings built after 1960 in relatively good condition where the probability of finding lead-based paint hazards is low, a comprehensive risk assessment may be unnecessary. To avoid the cost of conducting a comprehensive risk assessment, an owner of these dwellings may wish to have the risk assessor conduct a lead hazard screen before initiating the complete risk assessment. According to the HUD guidelines, such a screen employs more limited sampling and more sensitive hazard identification criteria. In general a screen involves determining overall paint condition in a unit, taking limited dust samples from floors and exterior window sills, and soil samples from bare soil. A detailed discussion of how to conduct a screen and the criteria used to evaluate the results of a screen can be found in the HUD guidelines. If a unit fails this screen, EPA recommends that a risk assessment, as described in proposed § 745.228(b)(2) through (b)(9) of the regulatory text, be conducted. Failure of the screen indicates that lead hazards may be present and that a more thorough risk assessment is warranted to definitively identify the lead hazards within the unit.

At this point the risk assessor would review any background information as described in proposed § 745.228(b)(2). This data will contain useful information regarding the physical characteristics of the unit and residential use patterns within the unit. This information includes the age of the building or if there are children under age 6 living in the unit, as well as information on any known lead-related health problems of any occupant of the dwelling unit. Further, the risk assessor would obtain any other available information that would characterize occupant use patterns that may generate or contribute to lead-based paint hazards. Examples of this information could include family hobbies that involve lead, the location of a commonly used entryway or commonly opened windows. The inspector/risk assessor should also obtain, if available, any previous test results or inspections regarding lead-based paint or other assessments for lead-related hazards. This information may prove valuable in determining the presence of lead-based paint without having to re-sample areas of the unit. However, the inspector/risk assessor must evaluate the quality and the reliability of any previous test results. Past inspections may not conform to current standards of care, possibly resulting in an incorrect determination of the location of lead-based paint.

The next step in a risk assessment is to conduct a closer visual inspection of the condition of the painted surfaces within the unit. Any paint found to be deteriorated should be tested by an inspector technician or the inspector/risk assessor according to the procedures found in the inspection portion of the proposed standards. The inspector/risk assessor should also test any surfaces that they determine may be a source of lead dust or lead-based chips. These include friction and impact surfaces such as door and window frames, or painted surfaces accessible to children such as window sills or stair treads.

Dust samples should be collected within each selected unit according in parts of the living area where children are most likely to come into contact with dust. These areas include bedrooms, family rooms, and kitchens. In general, any area that children frequent in the dwelling should be evaluated for lead-contaminated dust. The HUD guidelines as well as the currently available EPA model inspector course provide detailed guidance and instruction in the collection of dust samples in residential dwellings.

Finally, randomly selected soil samples should be collected by an inspector technician or inspector/risk assessor and analyzed in order to adequately characterize the lead concentrations in exterior play areas, areas containing bare soil, and along the dripline or foundation area of a unit.

All dust, soil, and where appropriate, paint samples should be sent to a laboratory that is fully recognized by EPA as being capable of performing these activities.

As with an inspection, the data collected as part of a risk assessment would be documented in an assessment report. Proposed § 745.228(b)(8) of the regulatory text describes all items required to be included in the risk assessment report.

Pursuant to section 401(16) of TSCA, a risk assessment may include "other activity as may be appropriate." Based on this language, the Agency is proposing that the risk assessment report should, as a final step, identify lead hazard control strategies to address all identified lead-based paint hazards. A justification for each hazard control strategy identified must also be provided. The inspector/risk assessor should also prioritize each of the hazard control actions based on the immediacy of the hazard, and recommend a schedule to the building owner for addressing hazards. Clearly the most hazardous conditions (e.g. badly deteriorated lead-based paint) within a unit should be addressed as soon as possible, and before other control actions are taken.

The risk assessment report is to be maintained by the owner of the residence or building, as well as the certified individual or firm that conducted the assessment for at least three years. This information would also be subject to the disclosure and recordkeeping requirements of the regulation developed under section 1018 of Title X.

E. Abatement for Target Housing

Abatement is defined by section 401(1) of TSCA as "any set of measures designed to permanently eliminate lead-based paint hazards." The term, as defined, includes the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil. In addition, it includes all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures. By definition, abatement is limited to those activities that are designed to permanently eliminate lead-based paint hazards.

Abatement does not include renovation and remodeling, or landscaping activities, whose primary intent is not to permanently eliminate lead-based paint hazards, but is instead to repair, restore, or remodel a given structure or dwelling, even though these activities may incidently result in a reduction in lead-based paint hazards.

For the purposes of this regulation, the Agency will presume abatement to occur in the following circumstances:

(1) Projects for which there is a written contract stating that an individual or firm will be conducting activities on or in a dwelling unit that will permanently eliminate lead-based paint hazards;

(2) Projects involving the permanent elimination of lead-based paint or lead-contaminated soil conducted by firms or individuals certified in accordance with this regulation; or

(3) Projects involving the permanent elimination of a lead-based paint hazard or lead-contaminated soil conducted by firms or individuals who, through their company name, promotional literature, or otherwise, advertise or hold themselves out to be lead abatement professionals. The definition of abatement includes the phrase "permanent containment or encapsulation." Encapsulation is defined as a process that makes lead-based paint inaccessible, by providing a barrier between the lead-based paint and the environment. This barrier is formed using a liquid applied coating or an adhesively bonded material. The primary means of attachment for an encapsulant is bonding of the product to the surface either by itself or through the use of an adhesive.

The Agency recognizes the fact that all encapsulant's will degrade over time, so therefore, no encapsulant is truly permanent. Nevertheless, the Agency would consider an encapsulant to be "permanent" within the meaning of TSCA Title IV if the encapsulant is periodically monitored and maintained over the lifetime of the surface. The Agency is soliciting comment on the proposed requirement for the periodic monitoring of encapsulants.

The permanent containment of lead-based paint would be achieved through the use of a mechanical enclosure system. The enclosure should be a rigid, durable barrier that is mechanically attached to the building component, with all edges and seams sealed with caulk or other sealant to provide a dust-tight system.

As defined in this proposal, an abatement would have to be conducted by persons certified by the appropriate approving authority as a worker or supervisor. Every abatement project would require a supervisor assigned to it who has been certified by the appropriate approving authority. The supervisor, if not on-site, would have to be available by phone and able to physically be present at the work-site within 2 hours. This supervisor, as well as the certified firm they work for, would be responsible for ensuring that all abatement activities in target housing are completed according to the standards outlined in this proposed rule.

Regarding project designer/planners, the Agency is including in proposed § 745.228(c)(7) of the regulatory text, a requirement that they prepare a written pre-abatement plan for projects involving the abatement of 10 or more units, since the size of these operations may require a level of expertise not required in single-family, or smaller multi-unit projects. The Agency is requesting comment on the proposed requirement that a project designer/planner must be utilized to design abatement projects for units numbering 10 or more. The Agency has also considered this size distinction in development of its Interim Final Regulations to amend the Asbestos Hazard Emergency Response Act's (AHERA) Asbestos Model Accreditation Plan to include public buildings.

A pre-abatement plan is to be completed by the supervisor or project designer/planner as appropriate for the size of the work project. This plan would follow the standards for worker, environmental and occupant protection as outlined in this proposed rule. Because there may be a potential conflict of interest between those who conduct the inspection/risk assessment and those who actually do the abatement, it is recommended that the plan contain a statement that the persons or firm engaged in the inspection and/or risk assessment of a unit should not perform lead abatement activities in that same unit. This type of conflict may arise if inspector/risk assessors are in a position to receive a financial benefit by recommending that an abatement be conducted.

To protect the health of building occupants, the rule as proposed would require that an occupancy protection plan be developed by the supervisor or planner/project designer. This plan should address what measures would be taken during the abatement to protect the building occupants, and what method of verification would be utilized to document this protection. In development of the plan, certain factors should be taken into consideration, for example, the length of abatement, remaining access to facilities and exits, and total area involved. In plans which require the relocation of occupants, samples would be collected, analyzed, and clearance levels met according to proposed § 745.228(c)(9) before re-occupancy.

An abatement project typically involves one or more of the following techniques: Building component replacement, the use of physical enclosure systems, or on-site or off-site paint removal from building components. It is the responsibility of the abatement supervisor, with possible input from the risk assessor, to determine the most appropriate course

of action to eliminate identified lead hazards.

Section 745.228(c)(6) of the proposed rule would require that the supervisor of an abatement job submit a pre-abatement notification to EPA or the approving authority, for their information, prior to the commencement of the abatement. In the case of an authorized State program, States may develop their own notification procedures as part of the State program. This requirement has been included to assist with targeting enforcement efforts.

The Agency wants to protect against lead abatement related risks to workers, the environment, and any individuals who may remain in a unit during abatement. The Agency believes that the Occupational Safety and Health Administration's (OSHA) May 4, 1994 Interim Final Rule, Lead Exposure in Construction, will adequately protect all workers engaged in lead-based paint abatement. The Agency is currently working closely with OSHA to ensure that workers employed by State and local governments, and therefore not covered by the OSHA regulation, will be covered under this proposed regulation in States without OSHA-approved State plans.

In its interim rule, OSHA reduced the permissible exposure limit (PEL) from 200 $\mu g/m^3$ as an 8–hour time weighted average (TWA) to an 8–hour TWA of 50 $\mu g/m^3$. The OSHA interim rule also includes a list of three categories of tasks that are commonly known to produce exposures above the PEL. The performance of the tasks within these categories automatically triggers basic protective provisions that mandate the use of particular types of respiratory protection unless air monitoring is conducted to determine that protection is not required.

Although not currently part of this proposed regulation, the Agency is considering prohibiting certain work practices, due to the potential risk of lead contamination posed by these practices to workers and/or the environment. The following work practices are being considered for prohibition during the abatement of lead-based paint in target housing:

i. Open flame burning of painted surfaces.

ii. Dry scraping or sanding of painted surfaces.

iii. The use of heat guns on painted surfaces for abatement without proper protection.

These practices have been singled out because of the potential risk of exposure to lead-contaminated dust and toxic fumes. The Agency is seeking comments and/or data related to exposure to lead-contaminated dust and fumes from these or other abatement work practices.

Following the completion of an abatement, post-abatement soil and dust clearance testing would have to be conducted by a certified inspector technician or an inspector/risk assessor according to the procedures in proposed § 745.228(c)(9) for dust sampling, and proposed § 745.086(c)(10) for soil sampling. Exterior dust and soil clearance levels would also have to be evaluated after the lead-based paint abatement of exterior walls.

The inspector/risk assessor would evaluate the results of the clearance testing to determine if the clearance levels have been met. It is also recommended that there be no economic relationship between the inspector technician or inspector/risk assessor and persons engaged in abatement due to conflict-of-interest concerns. The Agency is interested in comments on the burden of requiring that the clearance determination being made by the inspector/risk assessor, as opposed to the abatement supervisor.

The inspector/risk assessor should compare the residual lead dust level (as determined by the laboratory analysis) from each dust sample with the clearance levels for lead in dust on floors, window sills, window wells, and exterior surfaces, as established in the HUD Guidelines for the Evaluation and Controls of Lead-Based Paint Hazards in Housing. The Agency may in the future establish clearance levels pursuant to section 403 of TSCA, and if so, then these levels will be applicable.

If a unit fails clearance testing, the unit will be recleaned followed by repeating clearance procedures. In addition, the hazard control strategy may need to be reexamined and appropriately adjusted or improved if clearance levels continually fail to meet prescribed levels.

The potential for soil contamination, following exterior lead-based paint abatement activities, is also a concern of the Agency. The proposed approach to dealing with this problem is the comparison of pre- and post-abatement soil lead levels to determine what soil lead level should be achieved for clearance following an abatement. The testing protocol for soil in proposed § 745.228(c)(10) includes the sampling of soil from the dripline and foundation areas as well as any children's play areas. To determine if post-abatement soil lead levels (using the above-mentioned sampling methods) have increased at a statically significant level, the Agency is proposing that a statistical analysis, such as a paired student T-test be used. If the soil lead levels increase at the 95 percent confidence limit, then the soil must be remediated back to the pre-abatement lead level, or the soil must be abated following the standards in proposed § 745.228(j). If there is no significant increase at the 95 percent confidence limit, then no remediation or abatement is necessary.

Reports and recordkeeping play an essential role in tracking and monitoring the effectiveness and safety of lead-based paint hazard abatement in target housing. The certified supervisor is responsible for completing the abatement report as described in proposed § 745.228(c)(12).

Records would be maintained by the building owner and the persons conducting the abatement activity for at least 3 years. These records will be subject to the disclosure and recordkeeping requirements promulgated under section 1018 of Title X.

The proposed soil abatement procedures in § 745.228(j) of the regulatory text would require the removal of soil to a depth determined by the inspector/risk assessor and replacement of contaminated soil with non-contaminated soil. If contaminated soil is to be replaced with non-contaminated soil, the inspector/risk assessor will determine the source of soil that is to be used as a replacement. Since most soil has naturally occurring background levels of lead, replacement soil should contain levels that are not hazardous to human health or the environment. The Agency feels that the inspector/risk assessor has the experience necessary to chose an appropriate source of replacement soil.

As an alternative to removal and possible replacement, the contaminated soil shall be permanently covered. Examples of a permanent covering include pavement or concrete. Grass or other landscaping material are not considered permanent covering.

A written abatement report would also be prepared by the supervisor or planner/project designer, (depending on the size of the project) that provides a written description of the abatement and presents the results of the clearance testing. The abatement report would also be subject to the disclosure and recordkeeping requirements of the regulation developed under section 1018 of Title X.

F. Management of Waste From Target Housing Lead Abatement Activity

The Resource Conservation and Recovery Act (RCRA) establishes a comprehensive Federal program to regulate the handling of solid wastes

under 42 U.S.C. sections 6901–6992k. RCRA Subtitle C creates a cradle-to-grave regulatory structure for the treatment, storage, and disposal of hazardous waste (42 U.S.C. sections 6921–6939b). RCRA Subtitle D governs the disposal of nonhazardous solid waste (42 U.S.C. sections 6941–6969a). The RCRA regulatory structure requires generators to determine whether their solid wastes are hazardous wastes regulated under RCRA Subtitle C. EPA has promulgated a rule under RCRA which sets forth criteria for determining whether certain solid wastes or debris are hazardous wastes. One of the characteristics of hazardous wastes is toxicity. To determine if a solid waste is a toxicity characteristic hazardous waste, it should be tested for its toxicity characteristic pursuant to 40 CFR 261.24. The Toxicity Characteristic (TC) regulatory limit for lead is 5 parts per million in the leachate from the test protocol.

When abating lead paint, different types of solid waste are generated which may be subject to RCRA hazardous waste regulations. EPA is concerned that the application of RCRA hazardous waste regulations to these wastes may unnecessarily hamper lead abatement. The Agency wishes to minimize potential regulatory impediments thus facilitating lead paint abatement in residences where children and other individuals may be at risk. EPA is currently evaluating options for modifying RCRA regulations so that lead abatement proceeds expeditiously while ensuring safe and effective management and disposal of abatement wastes. Under a separate rulemaking, EPA plans to issue a proposal addressing lead abatement wastes.

G. Identification of Lead-Based Paint in Public Buildings

Sections 745.228 (a)(1) through (a)(7)(i) of the regulatory text proposes standards that would be used for the identification of lead-based paint in public buildings. Because children make up a significant number of the occupants in target housing and public buildings, which include day-care centers, schools, museums, and churches, these standards are the same as those proposed for target housing. A second reason for utilizing the same standards is the similarity of building and structural components in target housing and public buildings. Although many public buildings contain structural steel components, such as steel frames, these are covered for fire protection and cosmetic reasons with materials that are similar to those used in target housing. Given the similarity of materials presenting exposure risks to occupants, EPA believes that persons seeking to identify lead-based paint in public buildings can use the same inspection methods (such as XRF analysis) as those used in target housing.

Under proposed § 745.228 (d)(2), all information collected from the identification of lead-based paint would have to be maintained by the owner of the public building tested for a period of not less than 3 years.

H. Risk Assessment for Public Buildings

In addition to the structural similarities between public buildings and target housing, a high probability exists in certain public buildings (e.g., day care centers and schools), as in target housing, that children will be present and potentially exposed to lead-based paint hazards. Although, TSCA Title IV does not expressly require EPA to establish a risk assessment standard for public buildings, the Agency has decided for public health reasons to propose such a standard in this regulation. The Agency believes that regulating the conduct of a risk assessment in public buildings is implied in the definition of "deleading" in section 402(b), which includes planning of lead elimination activities. The Agency believes that without a proper risk assessment, there is no assurance that effective abatements can be conducted in public buildings.

The objective of a risk assessment is to determine the existence, nature, severity, and location of lead-based paint hazards and identify appropriate hazard reduction steps. Given the structural similarities between target housing and public buildings, this proposed regulation provides similar protocols to those required for conducting risk assessments in target housing. The Agency is specifically requesting comment on this proposed approach.

Under proposed § 745.228(e)(2), records would have to be maintained by the building owner and persons conducting the abatement and all information collected must be maintained by the owner of the building tested for a period of not less than 3 years.

I. Abatement in Public Buildings

The proposed standards in § 745.228(c)(1) through (c)(9)(iv)(D) and (c)(11) through (c)(16) of the regulatory text would also be applicable to abatement in public buildings as defined by this proposed rule. Section 402(b) of TSCA identifies abatement-like activities associated with public buildings using the term "deleading." Because both terms are defined in Title IV in terms of the "elimination" of lead-based paint hazards, for purposes of this proposed regulation, the Agency is treating the two terms, "abatement" and "deleading," as if they were synonymous. The Agency believes that abatement activities in public buildings and methods of measuring protection for their workers, occupants, and the environment should be similar to those for target housing.

Under proposed § 745.228(f)(2), records would have to be maintained by the building owner and persons conducting the abatement and all information collected must be maintained by the owner of the building tested for a period of not less than 3 years.

Management of waste from lead-based paint abatement activities in public buildings, including schools and day-care centers, is another area of concern to EPA. Wastes generated from lead-based paint activities (e.g., abatement and deleading) are currently, depending upon the results of the TC analysis, covered by RCRA hazardous waste regulations. As discussed in unit VIII.F. of this preamble, EPA is evaluating options for modifying existing RCRA regulations to eliminate potential impediments to lead abatement, while ensuring safe and effective management and disposal of such wastes.

J. Demolition in Public and Commercial Buildings and Superstructures

Under § 745.228(g)(1), the certified supervisor would be required to collect any historical information on the uses of lead-based paint in a building or superstructure that would be demolished. The proposed standards for demolition are applicable only when the deleading of components prior to destruction of the facility occurs. If deleading is conducted as a part of the demolition activity, the standards under § 745.228(i)(1) through (7) are applicable.

Additionally, the conduct of lead-based paint activities would require a hazardous waste determination pursuant to 40 CFR 262.11 prior to demolition. All demolition waste would be treated in accordance with RCRA.

K. Identification of Lead-Based Paint in Commercial Buildings and Superstructures

The proposed standards in § 745.228(h)(1) through (h)(4) of the regulatory text describe the standards for the identification of lead-based paint on steel superstructures and commercial buildings.

Based on information received from professional organizations that are involved in steel structure deleading activities, EPA believes: (1) That maintenance and painting records are available more often in a commercial setting than in target housing or public buildings; (2) that processes for lead identification in commercial buildings would be more similar to those used in superstructures than to those used in target housing because unenclosed metal components are a primary architectural feature of commercial buildings such as warehouses; and (3) the purpose of identifying lead is inherently different in commercial and superstructure settings from that in target housing settings. Unlike target housing, the purpose of identifying lead hazards in commercial and superstructure settings is not to remove the lead-based paint because it may pose a hazard to occupants. Instead, the purpose is to identify a potential hazard to workers doing building or structural maintenance, and the environment.

Paint (lead paint included) removed from components in commercial buildings and superstructures, is generally removed as part of routine maintenance on those components. The supervisor should determine if lead-based paint exists prior to starting work to minimize exposures to workers. Given the toxicity of lead, sampling to determine the presence of lead-based paint is commonly practiced prior to maintenance work on superstructures and in commercial settings.

These identification practices include obtaining relevant, available historical information on the use of lead-based paint for a structure or building. Previous project specifications or inspection reports may provide the necessary information. If the use of lead-based paint cannot be conclusively ruled-out, limited sampling would be conducted by a certified supervisor according to proposed § 745.228(h)(2).

Since the Federal Highway Administration (FHWA) ban on the use of lead-based paint on bridges in 1980, many States have required the use of lead substitutes for primary coatings on bridges. Given this requirement, the frequency with which bridges are repainted raises some fundamental questions about recordkeeping requirements. The Agency is proposing that all information collected from the identification of lead-based paint on steel structures such as bridges, would be maintained by the owner of the structure tested until such a time that the structure, or portion of the structure is to be repainted. This proposed requirement is based on the variable frequency with which steel structures are generally repainted and maintained. The Agency is requesting comment on this requirement to maintain records.

L. Deleading of Lead-Based Paint in Commercial Buildings and Superstructures

The proposed standards for deleading of commercial buildings and superstructures are found in § 745.228(i)(1) through (i)(8) of the regulatory text. Given the similarities between superstructures and commercial buildings described earlier, the Agency believes that deleading activities and methods of ensuring the protection of workers, occupants and/or individuals within the vicinity, and the environment should also be similar to those used for superstructures.

A deleading plan would have to be completed by a certified supervisor prior to initiating deleading activities. This plan would address worker protection, as well as environmental protection issues.

The Agency is concerned about the risk to workers and the environment due to deleading activities in commercial buildings and steel structures. As with all other abatement and deleading activities, the Agency is relying on the May 4, 1994 Interim Final OSHA rule, Lead Exposure in Construction. For a more complete discussion of these standards see the OSHA requirements at 29 CFR part 1926.

The Agency is also considering prohibiting open flame burning of painted surfaces; the dry scraping or sanding of painted surfaces; and the use of heat guns on painted surfaces for deleading on superstructures and commercial buildings because of the potential risk of lead contamination to workers and/or the environment posed by these practices. The Agency is interested in comments on whether it should prohibit these practices.

Waste generated when abating commercial buildings and superstructures may be subject to RCRA Subtitle C hazardous waste regulations and should be handled accordingly.

Recordkeeping requirements for deleading in commercial buildings or on superstructures with lead-based paint are proposed in § 745.228(i)(6). The report described in § 745.228(i)(6) shall be maintained by the owner or oversight agency until such a time that the structure, or portion of the structure is to be repainted.

The removal of lead-based paint in commercial buildings and superstructures, could potentially affect water quality through two routes. The first route is by non-point source contamination, e.g., lead-contaminated dust that is deposited as a result of deleading activities is transported overland to waterbodies through stormwater runoff. The second route is by point source discharge, e.g., a direct deposition of lead-based paint or dust to a waterbody, or from channelized stormwater runoff.

Non-point source contamination may be controlled through compliance with RCRA (40 CFR 3004(d) and 268.35(a)), which includes settled dust and debris from deleading activities. RCRA 40 CFR 268.35(a) prohibits the land disposal of waste which exceed the toxic characteristic regulatory limit for lead. In addition, guidance issued by EPA pursuant to the Coastal Zone Act Re-authorization Amendments (CZARA) section 6217(g) identifies a management measure for the operation and maintenance of roads, highways, and bridges in coastal States to incorporate requirements for pollution prevention procedures to reduce pollutant loadings to surface waters.

Removal of lead-containing materials from steel bridges has resulted in inadvertent discharges of lead compounds that exceeded State water quality criteria, and showed the potential for long-term environmental impacts based on sediment sampling ("Long Term Environmental Evaluation of Paint Residue and Blast Cleaning Abrasives from the Middle River Bridge Repainting Project," California State Department of Transportation, 1982). Existing federal regulations on steel structural projects are being applied on a site-specific basis. However, differences between States' water quality standards and subsequent implementation of those standards indicates a need for a consistent water quality policy with respect to discharges of lead into waterways during removal of lead-containing materials from steel structures. This is of particular importance due to the number of contractors who work in multiple State jurisdictions, as well as the occurrence of bridge structures which span interstate waters.

Under the Clean Water Act's (CWA) National Pollution Discharge Elimination System (NPDES) program and interpretive case law, paint removal devices used on bridges/superstructures, such as wet and dry abrasive blasters, high pressure waterjet blasters, and sponge-jet blasters, may constitute point sources. Therefore, the CWA mandates that NPDES permit applications must be submitted to either EPA or States approved to administer the NPDES program prior to any

discharge [40 CFR 122.21(c)]. Of course, if there is no discharge or potential discharge to waters of the U.S., no NPDES permit is required. Individual sources are required to obtain permits, but EPA believes that general permits may be an appropriate mechanism to cover bridge stripping and painting discharges. According to 40 CFR 122.28 (a)(2)(ii), the sources covered in a general permit must involve the same types of operations, discharge the same types of wastes, require the same operating conditions, require similar monitoring, and be more appropriately controlled under a general permit than under individual permits. General permits reduce the administrative burden on both the permitting agency and the permittee.

EPA requests comment on the best technologies available to avoid or eliminate releases of lead to the air, land, or water, and studies showing the amounts of releases that occur with those technologies. EPA can then suggest operating conditions or discharge limits which may be appropriate for general permits.

M. Applicability of RCRA to Lead-Based Paint Wastes from Public and Commercial Buildings and Superstructures

Waste generated by the lead-based paint abatement contractors when removing lead paint from public and commercial buildings and superstructures may be subject to RCRA Subtitle C hazardous waste regulations. The Toxicity Characteristic (TC) regulatory limit for lead is 5 parts per million in a leachate derived by utilizing the Toxic Characteristic Leaching Protocol (TCLP). The lead-based paint waste generator must determine if the waste generated is hazardous by either testing a representative sample of the waste in accordance with 40 CFR part 261 subpart C, or an equivalent method approved pursuant to 40 CFR 260.21, or by applying knowledge of the hazard characteristic of the waste in light of the materials or process used. If the representative test sample exceeds the TC regulatory limit, the waste must be managed as a RCRA hazardous waste, and the contractor would be a hazardous waste generator and must, therefore, comply with 40 CFR part 262 requirements. In addition, the training requirements for generators of lead-based paint waste as discussed in this preamble are applicable.

EPA has different requirements for generators of different quantities of hazardous waste. For example, the regulations conditionally exempt small quantity generators of 100 kg or less hazardous waste per calendar month, but it is very unlikely that waste generated during the deleading or abatement work on larger buildings and superstructures would generate less than 100 kg. Therefore, many of these contractors would be classified as ordinary generators and therefore would be subject to 40 CFR parts 262 through 266, 268, and 270 requirements.

If the lead-based paint waste is determined to be a hazardous waste and is captured, it could be managed on-site, most likely through storage or treatment. This can be technically more challenging and may require a hazardous waste treatment permit pursuant to 40 CFR part 270. One notable exception is the generator. Under this exception, a generator may treat lead-contaminated waste or lead-contaminated debris in containers or tanks in compliance with part 265, subparts I and J, and within the accumulation time limit of 90 days as specified in 40 CFR 262.34 (see 51 FR 10168, March 24, 1986). On August 18, 1992, EPA promulgated the Land Disposal Restrictions (LDR) for hazardous debris (57 FR 37194). In that rulemaking, hazardous debris is defined as solid waste with particle size 60 mm or larger. Therefore, paint chips, paint dust, and sludge's would not be considered hazardous debris. As part of that rulemaking, the Agency promulgated standards for a new hazardous waste management unit known as a containment building (40 CFR parts 264 and 265, Subpart DD), which may also be used to treat waste at the generator facility without a permit, provided the waste is not held longer than 90 days.

If hazardous debris is captured, hazardous debris treatment technologies that may be used include abrasive blasting, grinding or planing, vibratory finishing, high pressure steam, or water spraying to meet the performance standard referred to as the "clean debris surface." Other treatment technologies include macroencapsulation or sealing (surfacial treatment) or microencapsulation (solidifying with portland cement or lime). Microencapsulation could be done in tanks or containers. Hazardous debris is subject to compliance under the LDR treatment standards. Many States are currently authorized to implement LDR requirements pertaining to lead-based paint activities under the Hazardous and Solid Waste Amendments of 1984.

N. Applicability of RCRA to Lead-Contaminated Soil Near Public and Commercial Buildings and Superstructures

It is possible that, when performing lead-based paint activities (e.g., HEPA vacuum removal or sand blasting of lead paint) on public and commercial buildings, lead paint chips or lead dust hazardous under the TCLP would be released and would either fall on the soil underneath or blown down wind before reaching the ground. This constitutes "illegal disposal" of characteristic hazardous waste and is prohibited under RCRA sections 3004 and 3008. Therefore, individuals engaged in lead-based paint activities must take appropriate precautions to contain lead dust releases during sand blasting or when conducting activities that could potentially release significant quantities of paint dust leading to its deposition on the soil near public and commercial buildings or superstructures.

If the lead-based paint that is being removed exhibits the characteristic of toxicity for lead when conducting the abatement or deleading, it would be necessary to take steps to prevent deposition on land by capturing lead-contaminated dust and debris. If the abatement of deleading work resulting in land contamination is done without a RCRA TSD permit, then this deposition would be inferred as "illegal disposal." When conducting lead-based paint activities, therefore, it would be necessary to take steps to minimize "illegal disposal" by capturing lead paint dust.

There are two issues of concern for the Agency with regard to the enforcement of RCRA provisions for illegal disposal. These issues involve the possible impacts on worker protection and how compliance can be achieved given existing abatement and deleading technologies. Comments are requested on achievable methods to protect both the environment and workers in light of existing abatement and deleading technology.

VIII. State Programs

A. Introduction

This unit is comprised of two parts: (1) Procedures for States and Indian Tribes to follow in order to obtain authorization from EPA to administer and enforce a lead-based paint activities program, and (2) a model program that will serve as an archetype for these State and Tribal programs.

Section 404(a) of Title IV of TSCA provides that any State which seeks to administer and enforce the standards,

regulations, or other requirements established under section 402 or 406 may submit an application to the Administrator for approval of such program. Section 404(b) states that the Administrator may approve such an application only after finding that the State program is at least as protective of human health and the environment as the Federal program established according to the mandate of section 402 or 406 of TSCA and that it provides adequate enforcement. The procedures for submitting a State application are found in proposed § 745.325 of the regulatory text and are discussed in more detail below.

Section 404(d), directs the Agency to promulgate a model State program which may be adopted by any State which seeks to administer and enforce such a program. Given that section 404(a) requires that an authorized State program be at least as protective as the Federal program, the Agency expects that a State program seeking authorization, would resemble, in significant respects, the Federal program, and further, that the regulations found at proposed §§ 745.225 through 745.237 would serve as an appropriate model for such a State program. Therefore, the Agency is at this time proposing these regulations as the model program for the regulations developed under section 402(a) of TSCA. The regulations for section 406 of TSCA can be found at 40 CFR 745 subpart E.

Proposed § 745.225 of the regulatory text contains procedures for the accreditation of training programs for lead-based paint activities. Proposed § 745.226 would establish procedures for the certification of individuals engaged in lead-based paint activities, and proposed § 745.228 would establish standards for conducting these activities.

B. Submission of State Application

Any State which seeks to administer and enforce the requirements of this proposed regulation or the regulation developed under section 406 of TSCA would have to submit an application to the Administrator according to the procedures contained in proposed § 745.325. No other political subdivision (e.g. cities, towns, counties, etc.) other than States, as defined by section 3 of TSCA, and Indian Tribes, are eligible for authorization under this program. Following notice and an opportunity for a public hearing, EPA would approve a State application within 180 days, if EPA finds that the State program is at least as protective of human health and the environment as the Federal program, and it provides adequate enforcement.

Before developing an application for authorization, a State would publicly disseminate a notice of intent to seek such authorization and provide an opportunity for public hearing. A State application would contain a copy of the regulations and/or legislation establishing the State program, the name of the State agency that will administer and enforce the program, as well as information on the resources that the State intends to devote to the program, and an assurance that the State has or will have the legal authority necessary to carry out the program.

Pursuant to section 404(a) of TSCA, at the time of submitting such an application, the State may also certify to the Administrator that the State program meets the requirements of section 404(b)(1) and 404(b)(2) of TSCA. If this certification, or certificate of compliance, is contained in a State's application, the State program shall be deemed to be authorized by EPA, until such time as the Administrator withdraws the authorization. This certification would take the form of a letter from the Governor or Attorney General to the Administrator, and would include detailed written justification for concluding that the State's program is at least as protective as the Federal program. If the application does not contain such certification, the State program would be considered authorized only after the Administrator approves the State application.

EPA invites States to submit their authorization applications at any time after the effective date of the rule.

1. *EPA approval.* Within 180 days following submission of the application, the Administrator would approve or disapprove the application.

In the case of a State that provides a certificate of compliance, the program would be immediately deemed approved. In the case of a State application which does not contain a certification of compliance, the Administrator would approve a State program only if, after notice and after opportunity for public hearing, the Administrator finds that:

i. The State program is at least as protective of human health and the environment as the Federal program contained in §§ 745.225 through 745.237 of the proposed regulatory text, or in subpart E "Residential Property Renovation," has been proposed in the **Federal Register** separately from this regulation.

ii. The State program provides adequate enforcement.

The Agency would notify the State in writing of the Administrator's decision. Upon authorization of a State program it would be unlawful, for any person to violate or fail or refuse to comply with any requirements of such program.

The decision criteria above give the Agency reasonably broad latitude in approving or disapproving State programs. Specifically, EPA interprets the standard ". . .at least as protective as. . ." to mean that a State program need not be identical to, or administered and enforced in a manner identical to, the Federal program. The Agency expects to receive applications for State programs that will differ in some respects from the Federal program. The Agency will make every attempt to accommodate these differences while following the statutory requirement of ensuring that every State program be at least as protective as the Federal program.

Upon notification of authorization, the designated State agency within that State would be considered the approving authority for purposes of training program accreditation, certification of individuals, and enforcement of this program.

If a State does not have a State program authorized under this section and in effect by the date which is 2 years after promulgation of this proposed regulation, the Administrator would, by such date, establish the Federal program under subpart Q, or subpart E, as appropriate.

The Agency has received a number of comments from State representatives presenting concerns related to their potential inability to introduce legislation and promulgate regulations for an entire training, certification, and accreditation program that would cover target housing, public and commercial buildings, and superstructures within the TSCA Title IV timelines. The Agency understands these concerns and is committed to devising a program that would promote State adoption of the program.

If a State does not have an approved program within 2 years, the Agency would be required to establish a Federal program in that State. However, it was the intent of Congress, and is the policy of the Agency to encourage States to administer and enforce this program at the State level. The Agency is seeking comment on how to best achieve this goal within the 2–year time frame mandated by TSCA while ensuring that all lead-based paint activities will be adequately regulated.

Additionally, the Agency has received comment that there may be a need for Federal enforcement programs to be in

place even before State programs are enacted and authorized. It has been noted to the Agency that there may be the potential for egregious or widespread releases of lead-containing materials by "unregulated" abatement actions during the interim before State programs become effective. The Agency is confident that such situations can be effectively addressed through the application of a combination of existing Federal, State and local statutes and regulations. However, the Agency seeks comment on whether some or all of the requirements of the Federal program should be made immediately effective following promulgation of the final rule, pending authorization of State programs.

2. *Withdrawal of authorization.* As required by section 404(c) of TSCA, if a State is not administering and enforcing its authorized program in compliance with the standards, regulations, and other requirements of Title IV of TSCA, including section 404(b)(1) and (b)(2), the Agency would so notify the State and, if corrective action is not completed within a reasonable time, not to exceed 180 days, the Administrator would withdraw authorization of such program and establish a Federal program pursuant to Title IV of TSCA. Procedures for withdrawal of authorization can be found at proposed § 745.325(h) of the regulatory text.

C. Model State Program

Section 404(d) of TSCA, directs the Agency to promulgate a model State program which may be adopted by any State which seeks to administer and enforce a lead-based paint activities program. Given that section 404(a) requires that an authorized State program be at least as protective as the Federal program, the Agency expects that a State program seeking authorization, would resemble, in significant respects, the Federal program. Therefore, the entire Federal program for lead-based paint activities found at proposed §§ 745.225 through 745.237 is being proposed as the Model State Program.

Section 745.225 of the proposed regulatory text contains procedures and minimum requirements for the accreditation of lead-based paint activities training programs for workers, supervisors, inspectors and planners, and other individuals involved in lead-based paint activities. These requirements include: (1) Minimum requirements for the accreditation of training providers, (2) minimum training curriculum requirements, (3) minimum training hour requirements, (4) minimum hands-on training requirements, (5) minimum trainee competency and proficiency requirements, and (6) minimum requirements for training program quality control.

Proposed § 745.226 contains procedures and requirements for the certification of individuals engaged in the following activities: target housing and public building inspector technicians, inspector/risk assessors, supervisors, planner/project designers, and workers; and commercial building and superstructure supervisors and workers. These procedures include specific training and, when appropriate, experience/education prerequisites that individuals seeking certification would have. Additionally, this section specifies requirements for the certification of firms involved in inspection and abatement activities.

Proposed § 745.228 contains standards for conducting these activities. The standards for lead-based paint activities are divided into three separate categories: target housing, public buildings, and commercial buildings and steel structures. In target housing, the standards cover inspection, risk assessment, and lead abatement. The second set of standards, for public buildings, cover the inspection, risk assessment, abatement, and demolition. The final set of standards are for industrial settings. These include activities such as identification, deleading, and demolition for commercial buildings and superstructures.

The Agency hopes that this model will be especially useful to the many States that do not currently have an existing lead-based paint activities program. The Agency believes that adoption of this program would effectively reduce the risks of lead-based paint activities. However, the State program need not duplicate the Federal program in order to receive authorization from EPA. A State may choose to develop its own program, and it would be authorized if it is as protective as the Federal program.

1. *Major program elements* When developing a lead-based paint activities program, a State may choose to use the Federal program as a specific model or it may develop its own program. For States that choose not to use the Federal program as a specific model, the Agency has identified several major program elements below that a State program must have if it seeks to receive authorization from the Agency to administer and enforce the program.

To administer and enforce such a program successfully, a State must develop the appropriate infrastructure. A State program must establish a State agency or agencies, or designate an existing State agency or agencies to implement, administer, and enforce the State program. Given the scope of the program, it is likely that more than one State agency would be involved in the implementation and enforcement of this program. States are required to identify one State agency or organization within a State (the primary agency) that would serve to coordinate the activities of these agencies. States are also encouraged to, whenever possible, utilize existing State and local certification and accreditation programs and procedures.

The State program would require the certification of individuals and firms engaged in lead-based paint activities. The program would establish training requirements for individuals engaged in lead-based paint activities. The training component of a State's program would require that training be provided by an accredited training program. Proposed § 745.226 details the certification program developed by the Agency which may be adopted by a State, or it may be used as a model for States developing their own certification program.

The State program would contain regulations or procedures for the accreditation of training programs. The regulations or procedures would contain the following: (1) Minimum requirements for the accreditation of training programs; (2) minimum training curriculum requirements; (3) minimum training hour requirements; (4) minimum hands-on training requirements; (5) minimum trainee competency and proficiency requirements; and (6) minimum requirements for training program quality control. The State accreditation program would contain the minimum requirements of the accreditation program found at proposed § 745.225 of the regulatory text.

The State agency would establish standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. The Federal program at proposed § 745.228 would establish specific standards for performing these activities which a State program may choose to adopt. A State may also develop its own standards for some or all of these activities, as long as they are judged by EPA to be at least as protective as the Federal standards.

For instance, at proposed § 745.228(b), the Agency has developed procedures for conducting a risk assessment in target housing. The goal of a risk assessment is to determine and

report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings. Proposed §745.228(b) specifically describes a method of conducting such an assessment, and a State may choose to adopt this standard. A State may also develop its own procedures that achieve the same goal. This is the case for all of the standards in this regulation. In general, the Agency has developed specific standards that States may choose to adopt, or they may utilize their own standards, as long as they are at least as protective as the EPA standards.

The State agency or agencies would provide for the enforcement of the State certification and accreditation program, and establish suitable sanctions for those who fail to comply with the program requirements. This element of a State's program is essential because one of the Agency's two decision criteria for approval of State programs is the adequacy of the State's enforcement program. Before promulgation of the final regulation, the Agency anticipates developing a compliance and inspection strategy that would facilitate State implementation and provide guidance in determining that the State programs provide adequate enforcement. The State agency or agencies must have the authority to charge certification and accreditation fees. Section 402(a)(3) of TSCA states that:

> The Administrator (or the State in the case of an authorized State program) shall impose a fee on:
>
> (1) persons operating training programs accredited under this title; and
>
> (2) lead-based paint activities contractors certified in accordance with [section 402(a)] paragraph (1).
>
> The fees shall be established at such a level as is necessary to cover the costs of administering and enforcing the standards and regulations under this section [section 402] which are applicable to such programs and contractors. The fee shall not be imposed on any State, local government, or nonprofit training program. The Administrator (or the State in the case of an authorized State program) may waive the fee for lead-based paint activities contractors under subparagraph A) for the purposes of training their own employees.

EPA will determine what fees it will impose pursuant to section 402 (a)(3) before the Agency begins to enforce and administer the Federal program in any State.

2. *Reciprocity.* EPA strongly encourages each State to establish reciprocal arrangements with other States with authorized State programs. Such arrangements might address cooperation in certification determinations, the review and accreditation of training programs, candidate testing and examination administration, curriculum development, policy formulation, compliance monitoring, or the exchange of information and data. The benefits to be derived from these arrangements include a potential cost-savings from the reduction of duplicative activity and attainment of a more professional workforce as States are able to refine and improve the effectiveness of their programs based upon the experience and methods of other States.

There are several elements of the EPA training and accreditation program at proposed §§ 745.225 through 745.226 that are intended to facilitate interstate reciprocity. The first, and most critical, is the certification examination. The examination would serve to ensure that each individual who is certified under this program has a minimum level of knowledge in his or her particular discipline. At the same time, the certification examination development procedures would allow a State the flexibility to either adopt a "standardized" examination, or develop its own examination according to "standardized" guidelines.

As an additional element to facilitate interstate reciprocity, the Agency has proposed relatively specific minimum curriculum requirements. A third element is the inclusion of a refresher training course in the Federal program. Successful completion of a State accredited refresher course may serve as an ideal requirement for individuals seeking a reciprocal certification in another State.

D. Indian Lands

This proposal also addresses implementation of sections 402 and/or 406 of TSCA on Indian lands. For the most part, implementation of section 402 and 404 would be primarily a State responsibility. EPA would enforce a Federal program only if it does not approve a State program or if it finds that a State program is inadequate. While Congress did not specifically address implementation of Title IV on Indian lands, EPA has determined that proper lead abatement is as important for Indian Tribes as for anyone else. Accordingly, EPA has decided to treat Indian Tribes as if they were States for the purpose of administering and enforcing lead programs under sections 402 and 404.

1. *Authority.* States generally are precluded from enforcing their civil regulatory programs on Indian Reservations, absent an explicit Congressional authorization or State-Tribal agreement to do so. *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202, 216 and n.18 (1987). Furthermore, Congress has not created an explicit role for Tribes or the appropriate Indian Governing Body to implement Title IV, as it has done under most other major environmental statutes amended since 1986 (Safe Drinking Water Act, CERCLA, Clean Water Act, Clear Air Act). The term Indian Governing Body is used throughout this proposal to mean the governing body of the Tribe, band or group of Indians subject to the jurisdiction of the U.S. and recognized by the U.S. as possessing powers of self government.

There exist three principal options for effectively ensuring comprehensive implementation of Title IV on Indian Reservations: (1) Allow Tribes to apply for approval of section 402 or 406 programs in the same manner as States under this proposal; (2) make determinations on a case-by-case basis whether the State has adequate authority to ensure compliance with section 402 or 406 on Indian Reservations; and (3) make a blanket determination that States lack the authority to implement their programs on Indian Reservations and that EPA would enforce sections 402 or 406 directly on Indian Reservations in light of this determination.

EPA believes that the preferred approach would be to use a combination of options 1 and 2. Under this approach a State may propose, as part of its program approval application, to ensure section 402 or 406 compliance on Indian Reservations. The State would have to demonstrate adequate authority to ensure compliance with section 402 or 406 on the Indian Reservations. The burden the State would meet to demonstrate its authority to regulate on Indian Reservations is a high one, however. This type of demonstration of State authority over Indian Reservations is allowed, for instance, under regulations for the Underground Injection Control (UIC) Program of the Safe Drinking Water Act as well as several other EPA programs. 40 CFR 125.24(b). See e.g., 45 FR 33378 (1980); 53 FR 43080 (1988).

In the alternative, an Indian Governing Body could apply for authorization to run a section 402 or 406 program in the same manner as a State pursuant to the procedures specified in this proposal. Where it does not do so, EPA would enforce section 402 or 406 directly. Allowing for Tribal assumption of the section 402 or 406 program is consistent with EPA's Indian Policy and existing practice for other environmental programs.

EPA believes that adequate authority exists under TSCA to allow Tribes to apply for and receive authorization to run Title IV programs. EPA's interpretation of TSCA is governed by the principles of *Chevron. USA* v. *NRDC*, 467 U.S. 837 (1984). Where Congress has not explicitly stated its intent in adopting a statutory provision, the Agency charged with implementing that statute may adopt any interpretation which, in the Agency's expert judgment, is reasonable in light of the goals and purposes of the statute as a whole. *Id.* at 844. EPA believes that Interpreting TSCA to allow Tribes to apply for program authorization satisfies the *Chevron* test.

While some tribes may entirely develop their own lead programs, other tribes may look to existing programs as a starting point. Today's action does not require tribes to develop lead programs wholly from scratch. For example, a tribe could negotiate a cooperative agreement with an adjoining State to jointly plan and administer lead programs that are appropriately tailored to individual reservation conditions and tribal policies. Such an agreement would be subject to the review and approval of EPA.

Another possible option includes incorporating standards from an adjacent State as the tribe's own, with appropriate revisions that adapt the State standards to reservation conditions and tribal policies. Such adaptations would build on State experience and expertise and might represent quicker and less costly ways to establish tribal programs than developing tribal programs independently. This technique of utilizing small-scaled adaptations of State programs would allow tribes to build experience and expertise that could later be used to revise existing programs, if appropriate.

Smaller tribes may also wish to form consortiums or create inter-tribal agencies as ways to develop the necessary expertise to administer lead programs in a cost-effective way. Aside from any formal arrangements between tribes and States, EPA notes that the objective of this proposed rule is to provide for the safe, effective, and reliable abatement of lead-based paint hazards. Therefore, EPA encourages all affected sovereigns to work cooperatively in informal capacities to protect the public health and welfare from the serious health and welfare effects associated with lead-based paint hazards.

Consistent with EPA's interpretation of the application of Title IV to Indian lands, the proposed regulations would permit the Agency to make grants to Indian Governing Bodies and States to implement authorized Section 402 and 406 programs.

EPA specifically invites comment on its interpretation of the implementation of section 402 or 406 of TSCA on Indian lands.

E. Effective Dates

State programs may seek authorization of their programs pursuant to subpart Q effective date of promulgation of the final rule. Subpart L of part 745 shall apply in any State that does not have an authorized program under subpart Q, effective 2 years after promulgation of the final rule. In such States: (1) Training providers shall not provide, or claim to provide training for certification without accreditation from the Agency pursuant to § 745.225 after 2 years and 180 days after promulgation of the final rule; (2) No person shall engage in lead-based paint activities without certification from the Agency, pursuant to § 745.226 after 3 years after promulgation of the final rule; and (3) All lead-based paint activities shall be performed pursuant to the standards contained in § 745.228 after promulgation of the final rule. These dates should allow training providers sufficient time to receive accreditation, and for individuals to then receive training from an accredited training program and obtain certification. The Agency felt that because the standards in this regulation are being taught in the training courses, the standards should only be enforced after individuals have received training and obtain certification. Upon promulgation, the Agency will assess the number of programs that it must administer. If the demand for accreditation and certification is expected to greatly exceed the Agency's capability to approve training providers and certify individuals, the enforcement deadlines may be revised following appropriate public notice.

The timelines for implementation of the various requirements of this regulation should serve as a model for State program development, and States are encouraged to adopt these intervals.

F. Regulatory Assessment

1. *Introduction.* EPA has prepared a Regulatory Impact Analysis (RIA) in conjunction with this proposed rule. Ideally, when conducting an RIA, a benefit-cost analysis which measures all marginal benefits and costs of the regulation should be performed. Although it was possible to estimate the incremental costs, it was not possible to estimate incremental benefits. Data limitations prevented a complete estimate of incremental benefits: The absence of the necessary dose-response functions precluded the estimation of certain benefit categories (e.g., adult residential benefits and ecological benefits), and knowledge of certain impacts (e.g., blood-lead levels with and without training) did not allow for the estimation of the incremental benefits associated with this proposed rule. Therefore, an alternative approach was employed whereby total measured benefits (i.e., benefits that have been identified and quantified) of the regulation abatements were estimated to provide a perspective on the magnitude of the benefits against which to assess the possibility of net benefits.

The major findings contained in the RIA are presented in this brief summary, organized into five sections appearing below: Cost of Regulatory Action; Benefits of Regulatory Action; Benefit-Cost Analysis; Uncertainties and Sensitivity Analysis; and Impacts of the Proposed Rule. The complete document, "Title X Sections 402 and 404 Regulatory Impact Analysis," is available for inspection in the public docket.

Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, amended TSCA by adding Title IV. The purposes of Title X included a desire to develop a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible. Further, the Title X sought to encourage effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction and by ending the current confusion over reasonable standards of care.

Section 402, Lead-Based Paint Activities Training and Certification, is only one of the initiatives under TSCA Title IV aimed at fulfilling these goals. EPA is currently developing or has developed other portions of this overall lead hazard reduction program. For example, a required information dissemination program to inform the public of lead-based paint hazards in the home during renovation has been proposed under section 406. A regulation developed under section 1018 of Title X will soon be proposed and would require the distribution of this pamphlet at the time of real estate transfer, would require the disclosure of any known lead-based paint hazards and would allow the purchaser of real estate a 10–day period to conduct a risk assessment of the property. Benefits of these actions flow from providing

information describing lead hazards to home owners renovating homes, home buyers, and renters. Costs of these actions include preparing and disseminating information.

Section 403 of TSCA requires that the Agency shall ". . .promulgate regulations which shall identify. . .lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil." The section 403 regulations will represent EPA's determination of those conditions that cause exposure to lead in paint, residential soil and dust that would result in adverse human health effects. Benefits and costs accrue from the abatement of the identified lead-based hazards, and lead-contaminated dust and soil.

Although each of these initiatives have positive and negative impacts associated with them, the following narrative focuses on those impacts resulting from the implementation of sections 402 and 404.

2. *Cost of regulatory action.* The total estimated incremental costs associated with this proposed rule are presented in Table 1. Cost estimates are presented for two different abatement scenarios to present a range of possible costs: (1) Assuming abatement occurs whenever X-ray Florescence (XRF) Analysis indicates a lead in paint level of greater than 1 (XRF $\geq$1) and 500 parts per million (ppm) or more lead in soil (Scenario 1); and (2) assuming abatement occurs whenever X-ray Florescence Analysis indicates a lead in paint level of greater than 6 (XRF $\geq$6) for paint and 2,000 ppm or more lead in soil (Scenario 2).

Lead-based paint activities take place in target housing, as well as in public buildings constructed before 1978, commercial buildings, and steel structures. Maintenance of steel structures such as bridges, water tanks, and electrical towers may also involve activities affected by the proposed rules. Estimates of the costs of performing lead-based paint activities pursuant to the proposed standards were based on a number of factors, including the number of lead-related inspections, risk assessments, and abatement activities and the unit costs associated with such activities.

The incremental costs estimated to be incurred in association with the proposed rule have been grouped into three categories: (a) Costs resulting from the imposition of the standards for conducting lead-based paint activities; (b) costs resulting from the training and certifying of individuals engaged in lead-based paint activities; and (c) costs of establishing and operating State or Federal programs to administer and enforce the standards, regulations, or other requirements established under this proposed rule. For each of these three categories of costs, total incremental costs were estimated separately for the first year following promulgation (1994), and the present value for a 50–year stream of costs discounted at 3 percent. (A 50–year stream was used because it was thought to provide a reasonable estimate of the average life of a home, and a period beyond which discounted costs would have little impact on total costs).

Under Scenario 1, total first-year incremental costs were estimated to be approximately $1.4 billion, while total incremental costs, discounted at 3 percent over 50 years, were estimated to be $10.6 billion. Under Scenario 2, total first year incremental costs were estimated at $.8 billion and total incremental costs, discounted at 3 percent over 50 years, were estimated at $6.2 billion. As may be discerned from Table 1, by comparing cost estimates for the two scenarios presented, total costs decrease as abatement cut-offs increase (paint and soil lead concentrations), since fewer structures and less soil would be abated.

As demonstrated in the accompanying RIA, the standards for conducting lead-based paint activities are the main source of costs, accounting for approximately 80 percent of the total incremental costs under both scenarios, due largely to identification and inspection requirements and soil abatement. Under Scenario 1, the incremental cost of public building identification is the greatest expenditure, accounting for 27 percent of the total incremental costs in the first year of implementation and approximately 23 percent of the $10.6 billion total incremental cost. Under Scenario 2, public building identification is again the greatest expenditure accounting for 47 percent of total incremental costs in the first year of implementation and approximately 39 percent of the $6.2 billion total incremental cost discounted over 50 years. The public building identification costs associated with the nonresidential sector are high due to the assumed high level of activity in this sector during the first 3 years of rule implementation.

Training costs were estimated to be approximately 17 percent of total discounted costs for each of the scenarios. Factors affecting the potential magnitude of training costs are frequency and duration of training, as well as the number of potential trainees and associated productivity losses.

With regard to State program costs, EPA found the one-time start-up costs to be the dominant factor. Owing to such start-up costs, total first-year costs were estimated to be much larger than costs for any subsequent year. In developing its total cost estimates for State programs, EPA assumed all States would establish such programs. While nothing in Title IV requires States to seek authorization, the costs of EPA administration and enforcement were judged to be comparable to State costs; thus, for the purposes of this analysis, this assumption is believed to provide a reasonable representation of costs attributable to section 404.

3. *Benefits of regulatory action.* To most accurately estimate the benefits associated with this proposed rule, all private and social advantages of the proposed rule's requirements would need to be identified and quantified. In particular, the incremental risk reduction brought about by conducting lead-based paint activities using trained and certified individuals and complying with the standards would need to be measured and valued as incremental benefits. Such risk reduction would be the result of reduced lead exposure to residents of target housing; to occupants of and visitors to public and commercial buildings; to risk assessors, inspectors, and abatement workers; to individuals in close proximity to lead-related activities; and to the environment.

The total measured benefits (i.e., benefits that have been identified and quantified) associated with complete residential abatement, include intelligence effects on infants and children, reductions in neonatal mortality due to decreased exposure to pregnant residents, and benefits to workers of avoidance of the very high blood lead levels associated with occupational exposure. (EPA also considered benefits resulting from reduced exposure to adult residents. The results of these preliminary calculations are included in the sensitivity analysis below.)

Total measured benefits estimated in this manner overstate actual benefits associated with the incremental improvement imparted by the training, certification, and standards outlined in the proposal. EPA believes, however, that these total measured benefit estimates when compared to the incremental cost are sufficient to provide the basis for an informed decision. EPA requests comment, in light of the data limitations, on the value of this approach in evaluating the potential effectiveness of this regulation. Further, the Agency requests the submission of any available data that

would facilitate the development of incremental benefit values for the requirements of this regulation as well as incremental benefits and costs of alternative regulatory requirements.

The results of this approach are presented in Table 2. The estimated discounted total measured benefits over 50 years range from a low of $11.8 billion (abatement Scenario 2) up to $21.6 billion (abatement Scenario 1). The largest category of benefits accrue in association with children's intelligence effects, with an expected 50–year benefit of $11 billion to $19 billion, depending on the abatement scenario. Benefits realized in association with reductions in neonatal mortality were estimated to range between $.8 billion and $2.6 billion, while benefits to workers were estimated at $2.1 to $5.1 million, over 50 years. In addition, benefits to non-residential abatement workers were estimated at $34 to $49 million.

4. *Benefit-cost analysis.* As shown in Table 3, total measured benefits are approximately double the incremental costs—the estimated incremental costs of the regulation under Scenario 2, discounted at 3 percent and summed over 50 years, is estimated to be $6.2 billion, and the estimated total measured benefits of the regulation, discounted at 3 percent and summed over 50 years, are $11.8 billion.

Given that the incremental costs associated with the nonresidential sector amount to nearly 58 percent of all costs attributable to the rule and that the data limitations so severely restrict the benefit estimations for the nonresidential sector, the base case analysis also compares total measured benefits and incremental costs on a per residential abatement basis to gain additional insight to the impacts of the proposed regulation. In an effort to minimize the impact of the above limitations on the assessment of net benefits, an additional comparison was made between benchmark total measured benefits and incremental costs for a single residential abatement. As shown in Table 4, if only a small portion of estimated total measured benefits, say 15 to 20 percent are attributable to the proposed rule, it is possible for the incremental benefits to equal or exceed the incremental costs for paint abatement activities in the residential housing sector.

A similar comparison is not possible for the nonresidential sector because data limitations preclude benefit estimates for this sector. This is not to imply that the benefits resulting from nonresidential abatements are insignificant. All the benefit categories believed to result from public and commercial and steel structure deleading are identified in Table 3. Available information regarding the scope of activity (and presented in the uncertainties section below) would suggest that substantial benefits are likely to exist in the form of other worker benefits, benefits to nearby residents, and ecological benefits.

The estimate of the benefits would increase if all the omitted health and ecological effects were included. Even when restricted to the limited coverage of the effects of lead paint exposure that are included in this analysis, it is possible that the measured benefits associated with sections 402 and 404 will exceed the costs of the regulations. The measured benefits of complete abatements are more than six times the incremental costs for Abatement Scenario 2. Thus if the sections 402 and 404 rules increase the measured benefits of residential abatements (using current industrial practices) by as little as 18 percent, the benefits would exceed the costs of the regulation. A benefits analysis that included the significant omitted benefit categories would indicate that an even smaller percentage increase in the benefits of current abatement practices would be sufficient to cover the costs of the regulation.

5. *Uncertainties and sensitivity analysis uncertainties.* The development of the estimated costs for this proposed rule relied on three steps: The determination of "common" practices, a comparison of these practices to the requirements of the rule, and an estimation of the cost of the additional or incremental activities. While there is a general uncertainty about all the estimates, this approach may have resulted in an overestimate of the costs. In the case of the number of samples to be tested, the analysis included costs for the full number of tests required under the regulation. Inspectors are already taking some samples, although some may not take as many as the regulations will require. Lacking information on the typical number of samples tested, the analysis included the costs for all the tests. Likewise, interviews with industry representatives indicated that very few soil abatements were currently taking place. Therefore, the analysis estimated the rate of soil abatements under the regulation based on estimates of household radon abatement. Since radon abatements are less expensive than soil abatements, this assumption may have resulted in an overestimate of the number of soil abatements and thus an overestimate of both benefits and costs. Both these issues are examined by the sensitivity analysis below.

The development of the benefit estimates was also limited by numerous factors. It was not possible to include several potentially major sources of health benefits at this time. Some of the major omitted benefits include:

- All benefits to adult residents.
- All benefits to building occupants.
- All benefits to workers with blood lead levels below 50 μg/dL.
- All benefits to residents near steel structure deleadings.
- All ecological benefits.

All of the benefits in three of the five major categories, and part of the benefits to workers, result from changes affecting abatements and deleading of public and commercial buildings and steel structures. As a result, the underestimation of benefits has its greatest effect on the evaluation of the proposed rule's affect on nonresidential lead-based paint activities.

The magnitude of some of these omitted benefits can be approximated by examining the extent of the likely exposure and the nature of the resulting adverse effects. In the case of benefits to occupants of public and commercial buildings, the potentially exposed population is very large. Over one-third of public buildings built before 1980 (approximately 900,000 buildings) have lead-based paint at an XRF reading of 1 or greater. In addition, about 27 percent of commercial buildings (approximately 415,000 buildings) have lead-based paint at an XRF reading of 1 or greater. An equal percentage (nearly 150,000) of industrial buildings also have lead-based paint at that level. Currently, these buildings result in over one-half million deleadings per year. While the length of time of exposure for each individual building occupant may be short, the number of exposed individuals is great, resulting in potentially substantial population risks from improperly performed abatements. In addition, inadequate inspection and/or risk assessments could result in much longer-term exposures if lead risks are not identified and abated.

Since the deleading of steel structures mainly occurs out-of-doors, there is a significant potential of exposure to the surrounding environment if deleading is not conducted properly. Currently, there are approximately 725,000 highway and railroad bridges, 30,000 water tanks, 75,000 petroleum and liquefied natural gas tanks, and 133,000 electrical transmission towers with lead-based paint that need repainting, and about 128,000 underground storage tanks with lead-based coatings that need removal and demolition. While this analysis has not estimated the number of people living in proximity to these structures,

the large number of structures combined with the fact that many are located in urban areas means that substantial numbers of people and large areas of ecosystems could be exposed to lead.

In addition to adverse human health effects, lead can impose substantial adverse effects on ecosystems. Although lead occurs naturally in the environment, it plays no known beneficial role in biological processes. In fact, lead is a natural toxicant that affects a broad spectrum of species and persists in the environment. Elevated ambient lead levels that are bioavailable can seriously disrupt population and ecosystem dynamics. As a result, lead is considered a particularly hazardous ecotoxicant. While deleading of steel structures is likely to have the greatest impact on ecosystems, improperly performed abatements in other nonresidential and residential buildings can also introduce lead into the general environment.

In addition to omitting benefits to occupants of nonresidential buildings, benefits to residents near steel structures, and ecological benefits, the estimates presented in the RIA may underestimate benefits because of the assumption made concerning which residential units will be abated. The analysis assumes that all the housing stock with XRF and/or soil-lead levels greater than the scenario levels are eligible candidates for abatement, and that housing units receiving abatements are twice as likely to have young children and newborns as the housing stock in general. This second assumption captures the increased concern about lead hazards and children, and the increased benefits that would accrue to households with young children. The increased concern will likely result in increased abatement rates among housing units with children. However, there are no data currently available on which to base an estimate of this increased likelihood of abatement, and the estimate used may be low. A low estimate will result in an underestimate of the average residential unit benefits. (Likewise, a high estimate will result in an overestimate of the average residential unit benefits.) In addition, if the likelihood of abatement increases with the level of lead present in the home, which is very likely, the average per unit benefits of residential abatement will increase correspondingly.

Data limitations have prevented the estimation of the relevant abatement demand and cost functions which are necessary for accurately estimating the aggregate benefits and costs of the proposed rule. Adoption of the rule will impact variables that affect both the demand and supply functions. For instance, in theory, the increase in abatement costs resulting from training, accreditation, and standards required by section 402 will be reflected in an upward shift of the supply function, increasing prices and resulting in a decreased demand. However, it is reasonable to expect countervailing forces to exist. If people perceive that abatements performed by trained and certified contractors are a better quality service than currently available, the demand for the improved abatements may increase.

In addition to demand shifts as a result of section 402, informational sections of Title IV and Title X such as sections 405, 406, and 1018, respectively, will likely stimulate demand for abatements further. These actions provide information and education to consumers about the inherent dangers of lead.

The net effect of these countervailing forces is difficult to predict with the limited information available. Data limitations have also prevented an assessment of how the quantity of lead-based paint activities may change with alternative regulatory options. Therefore, EPA has been unable to estimate the effect of more (or less) precriptive approaches relative to the proposal on the quantity of lead-based paint activities. The Agency solicits comments and suggestions about data sources or methods that may help in assessing the incremental benefits and costs of alternative approaches.

In order to deal with this issue, it is assumed that the demand for deleading in Massachusetts can provide a proxy for estimating national demand after the regulation is in place. This is deemed appropriate since the training, accreditation, and performance requirements (thus costs) for the established Massachusetts' program are similar to that of the proposed rule. To the extent that residential abatements are mandatory in Massachusetts when elevated-blood-lead (EBL) children are identified, the adoption of Massachusetts' abatement rates will result in an overestimation of the number of national residential abatements. However, it is felt that overestimation will be minimal for the following two reasons: information from the Massachusetts' Department of Health indicates that only 10 to 20 percent of the residential abatements are a result of the presence of EBL children, and because it is likely that other States will also adopt a mandatory abatement provision for EBL children.

EPA knows of no other State programs that may provide additional insights to the expected impacts on demand resulting from the implementation of the proposed rule and, therefore, solicits public comment on the existence of State programs and relevant information germane to this issue.

6. *Sensitivity analysis.* Six sets of sensitivity analyses were conducted. Two sets affecting only the costs are alternative costs of standards, resulting from alternative estimates of unit costs or alternative assumptions of the number of events; and, alternative training costs, resulting from alternative definitions of training requirements. There are two sets of sensitivity analyses that affect the benefits while leaving the costs unchanged. These two analyses explore alternative levels of benefits to adult residents of units abated and alternative value of a statistical life. And finally, there are two sets of analyses that affect both the costs and the benefits. These use an alternative discount rate, and assume alternative levels of abatement activity. The impacts of these variables on the estimated costs and benefits are presented in Tables 5 and 6, respectively.

The greatest affects on the estimated benefits and costs are associated with the assumptions concerning choice of discount rate and the rate at which soil abatements will occur. Since the benefits resulting from the proposed regulation will not occur simultaneously with the costs, it is necessary to compare streams of costs with the resulting streams of benefits. This is done by discounting future costs and benefits and summing the discounted values. Two alternative approaches were investigated: using 7 percent in place of 3 percent to reflect an alternative social rate of time preference, and using a two-stage procedure that allows for the use of two different discount rates: marginal rate of return on capital (7 percent) for annualizing the capital costs; and a social rate of time preference (3 percent) for discounting the stream of annualized costs and benefits. The distinction between these two approaches rests with whether the source of funds for lead-based paint activities are displacing investment or consumption.

Simply discounting the stream of costs by 7 percent decreases the total 50–year cost estimate by 27 percent. At the same time, increasing the discount rate to 7 percent substantially decreases the estimated benefits more than the cost, because many of the benefits will occur further in the future. There are potentially two separate effects of

changing the discount rate. First, the benefits per abatement decrease for all the quantified benefit categories except for workers benefits and the present value of the 50–year benefits decreases for all the benefit categories (including workers). The combination of these two effects decreases the present value of the 50–year benefit stream by 87 percent. Consequently, the choice of discount rate affects benefits to a much greater extent than it does costs.

The results of the two-stage discounting procedure are very sensitive to the amortization period (the length of time capital is diverted from investments). Given the uncertainties about the appropriate amortization period, 50–year discounted costs were not calculated. However, as demonstrated in the literature the two-stage results will fall between the single discount rates of 3 and 7 percent used in these analyses.

One of the most important elements used in estimating the benefits is the willingness to pay to avoid a unit reduction in the risk of death, also referred to as the value of a statistical life. The value of a statistical life directly enters the calculations of the benefits of the avoided neonatal mortality, adult resident hypertension related benefits (when included), and worker benefits. The results presented in base case are calculated using a value of $5.3 million per statistical life. The standard deviation of these values is $3.8 million. A useful range of alternative values for sensitivity analysis is mean value minus one standard deviation, and the mean value plus one standard deviation. The range of alternative values of a statistical life is therefore $1.8 million to $9.1 million. Use of this range will have a significant effect on neonatal mortality benefits. However, the alternative values do not alter the overall benefit estimates greatly; the present value of benefits per abatement and of total benefits (over 50 years, discounted at 3 percent) changes by plus or minus 5 percent.

The primary analysis relies on Massachusetts and OSHA data to estimate most of the levels of abatement activity, in terms of the number of inspections, and abatements/deleading, under the proposed regulation. The Massachusetts and OSHA data provide little information regarding the number of soil abatements. For estimates of rates of soil abatement, therefore, the analysis relies on information on rates of radon abatement. The primary analysis assumes a similar response rate to the presence of lead in soil as to the presence of radon in soil. In other words, 20 percent of the soil inspections that determine the presence of lead result in a soil abatement.

The sensitivity analysis assumes two alternative abatement rates (84 and 10 percent) which reflect likely response rate extremes. For target housing, the lead paint abatement rate was 84 percent. If individuals respond to the presence of lead in the soil similarly to interior lead paint, then the soil abatement rate also will be 84 percent. The 10 percent alternative is examined because based on the radon abatement experience, the 20 percent abatement rate used in the primary analysis may be too high.

Changing the level of soil abatement activities will affect training, standards, and state costs at an 84 percent abatement rate, the total cost of the regulation will increase by 26 percent, with standards costs increasing 32 percent. Using a 10 percent abatement rate the total costs will decrease by only 4.5 percent.

Changing the level of soil abatement activities also changes the estimated benefits. The per-abatement benefits do not change from performing an interior-only, soil-only, or combined paint and soil abatement. However, the average per-abatement benefits change when the number of soil (and paint and soil combined) abatements change. At an 84 percent abatement rate, the total measured benefits will increase 30 percent; and using a 10 percent abatement rate will result in a 5 percent decrease in total measured benefits.

7. *Impacts of the proposed rule.* In assessing impacts of the proposed rule, EPA focussed on the potential of the rule to affect international trade and to impact technological innovation. The distributional consequences of regulation (environmental equity) were also investigated. (Small business impacts, assessed pursuant to the Regulatory Flexibility Act of 1980, were also assessed. The results of this analysis are presented in unit X. of this preamble.)

With regard to international trade impacts, EPA examined the affected industries to determine whether the extent of foreign trade merited a detailed examination of potential impacts. Since the industries directly affected by this proposed rule are service industries, marketable goods would not be produced for trade. The reduction in lead-based paint hazards expected is achieved through the identification and abatement of lead-based paint structures in the United States and, therefore, will have no implications for international trade. Thus, EPA concludes that there is no appreciable international trade in these services.

In assessing the proposed rule's potential impacts on innovative activity, EPA believes that certain requirements are likely to encourage innovation, while others may be a hinderance. For example, an area where innovation might be encouraged is in the case of testing to determine the presence of lead. The standards require that the presence of lead be determined by a test that produces discrete measures. While this proposed rule does not prescribe or prohibit any particular practice, it does require that certain results be achieved. Thus, in setting criteria for new approaches in this case, the proposed rule does not eliminate the potential for innovation by requiring the use of any particular method, such as XRF.

The key factor in EPA's investigation into the distributional impacts of the proposed rule was the distribution of lead-based paint in the nation's housing stock. Lead-based paint is more common in older, low-cost housing units in the Northeast and Midwest. Because such housing units tend to be occupied by households at or below the poverty level, including a disproportionate share of African-Americans, these subpopulations are exposed to relatively more risks than other subpopulations. While these subpopulations would be likely to receive a greater portion of the overall risk reduction benefits of the rule, the fact that most abatements are voluntary suggests that wealthier households will be more likely to proceed with abatements. Unfortunately, data are not available to permit estimates to be made of the demand for abatement given differing household income levels; thus, the distribution of benefits and costs across geographic and demographic lines were not estimated.

Table 1.—Summary of Estimate of the Total Cost

Scenario 1: XRF ≥ 1 for Paint and 500 ppm or More for Soil

Cost	First Year Cost (1994) ($millions)	Total Discounted 50–yr. Cost (3%) ($millions)	Percentage of Total Cost
Training	501	1,878	18%
Standards	830	8,439	80%
State Program Administration	36	259	2%
Total for XRF ≥ 1, 500 ppm	1,367	10,576	100%
Scenario 2: XRF ≥ 6 for Paint and 2,000 ppm or More for Soil			
Training	222	1,053	17%
Standards	557	4,952	80%
State Program Administration	24	184	3%
Total for XRF ≥ 6, 2,000 ppm	803	6,190	100%

Source "Title X Sections 402 and 404 Regulatory Impact Analysis," U.S. EPA, Office of Pollution Prevention and Toxics, Regulatory Impacts Branch.

Table 2.—Summary of Total Measured Benefits

Scenario 1: XRF = 1, Soil Lead Content = 500 ppm

Benefit Category	Total Benefits, First Year (Millions)	Present Value, 50 Years (Millions)
Children**	$836.5	$18,975
Neonatal Mortality**	$115.8	$2,605
Workers Involved in Abatement	$0.2	$5.1
All Other Workers	$4.9	$49
Total Benefits***	$957.5	$21,635
Scenario 2: XRF = 6, Soil Lead Content = 2,000 ppm		
Children**	$494.0	$10,968
Neonatal Mortality**	$36.4	$804
Workers Involved in Abatement	$0.10	$2.1
All Other Workers	$2.6	$34.0
Total Benefits***	$533.2	$11,808

**Benefits of complete abatements, not just incremental benefits from this rule

***Combination of incremental and complete abatement benefits

Table 3.—Estimated Total Benefits and Incremental Costs over 50 Years

Scenario 2 (XRF=6, Soil=2,000 ppm)—3 percent discount rate

Total Measured Benefits from Abatements (except where noted)		Incremental Costs Due to Regulation	
Benefit Category	Present Value	Cost Category	Present Value
Residential Abatements			
Infant and Children Intelligence Effects — Total	$11.0 Billion	Training Cost	$91 Million
Other Infant & Children Neurological Effects — Total	Not Measured	State Program Cost	$54 Million
Neonatal Mortality—Total	$804 Million	Standards Cost	$1.7 Billion
Adult Hypertension—Total	Not Measured		
Other Adult Health Benefits	Likely Substantial*		
Workers (PbB > 50 µg/Dl)—Increment due to Regulation	$2 Million		
Other Worker Benefits	Likely Substantial*		
Ecological Benefits	Not Measured		
Percent Value of 50 Year Stream—Residential	$11.77 Billion	Percent Value of 50 Year Stream—Residential	$1.8 Billion
Public and Commercial Building and Steel Structure Deleading			
Workers (PbB > 50 µg/Dl)—Increment Due to Regulation	All Deleading $34 Million	Training Cost	$963 Million
Other Worker Benefits	Likely Substantial*	State Program Cost	$129 Million
Building Occupants	Not Measured		
Benefits to Nearby Residents	Likely Substantial*	Standards Cost	$3.3 Billion
Ecological Benefits	Likely Substantial*		
Present Value of 50 Year Stream Non-Residential	Likely Substantial*	Present Value of 50 Year Stream Non-Residential	$4.4 Billion
Total Present Value (Sum of Residential and Non-Residential Structures): Quantifiable Benefits and Costs			
All Structure Types—50 Year Stream	$11.81 Billion + Substantial Unquantifiable Benefits	All Structure Types—50 Year Stream	$6.2 Billion

*Benefits are presumed to be substantial, but cannot be estimated due to lack of quantified information on the incremental reductions in human and ecosystem exposure.

Table 4.—Comparison of Residential Incremental Costs Due to Proposed Rule to Total Measured Residential Benefits, Per Residential Unit Abated

Scenario 1 (XRF=1, Soil=500 ppm)
Residential Abatements

Total Measured Benefits from Complete Abatements (except where noted)		Incremental Costs Due to Regulation	
Benefit Category	Estimated Value Per Abatement	Cost Category	Estimated Cost Per Abatement
Infant and Children Intelligence Effects—Total	$8,271	Training Cost	$94
Other Infant & Children Neurological Effects—Total	Not Measured	State Program Cost	$52
Neonatal Mortality—Total	$1,133	Standards Cost	$1,763
Adult Hypertension—Total	Not Measured		
Other Adult Health Effects	Not Measured		
Workers (PbB > 50 μ/Dl)—Increment due to regulation	$2.22		
Other Worker Effects	Not Measured		
Total	$9,406	**Total**	$1,909

Scenario 2 (XRF=6, Soil=2,000 ppm)
Residential Abatements

Infant and Children Intelligence Effects—Total	$15,482	Training Cost	$123
Other Infant & Children Neurological Effects—Total	Not Measured	State Program Cost	$88
Neonatal Mortality—Total	$1,133	Standards Cost	$2,303
Adult Hypertension—Total	Not Measured		
Other Adult Health Effects	Not Measured		
Workers (PbB > 50 μg/Dl)—Increment Due to Regulation	$2.74		
Other Worker Effects	Not Measured		
Total	$16,618	**Total**	$2,514

Table 5.—Sensitivity of Cost Estimates to Variations in the Value of Key Variables

Variation in Key Variable	Total Discounted Costs ($billion)		%Change from Primary Analysis
	Primary Analysis	Sensitivity Analysis	
Reduce Lab Fees by 15%	$6.19	$5.85	-5.4%
Increase Lab Fees by 15%	$6.19	$6.53	+5.4%
Reduce Amount of Hands-on Training Time by One Half	$6.19	$6.18	-0.2%
Use 7% Discount Rate	$6.19	$4.51	-27.1%
Reduce Soil Abatement Rate by One Half (to 10%)	$6.19	$5.91	-4.5%
Increase Soil Abatement Rate 4.2 Times (to 84%)	$6.19	$7.80	+26.0%

Table 6.—Sensitivity of Cost Estimates to Variations in the Value of Key Variables

Variation in Key Variable	Total Discounted Benefits ($billion)		%Change from Primary Analysis
	Primary Analysis	Sensitivity Analysis	
Reduce Value of a Statistical Life to $1.4 Million	$11.8	$11.2	-5%
Increase Value of Statistical Life to $9.1 Million	$11.8	$12.4	+5%
Include Benefits to Adult Residents, Assuming 2.13 μg/Dl Change in Blood Lead	$11.8	$31.2	+164%
Include Benefits to Adult Residents, Assuming 0.1 μ/Dl Change in Blood Lead	$11.8	$12.8	+8%
Use 7% Discount Rate	$11.8	$1.5	-87%
Reduce Soil abatement Rate by One Half (to 10%)	$11.8	$11.2	-5%
Increase Soil Abatement Rate 4.2 Times (to 84%)	$11.8	$15.3	+30%

G. Enforcement

Section 409 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under Title IV of TSCA. Therefore, failure to comply with any provisions of the final rule would be a violation of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 or 409 is subject to a civil penalty of up to $25,000 for each violation. Each day a violation continues may constitute a separate violation. Knowing or willful violations of any provision of the final rule could lead to the imposition of criminal fines of up to $25,000 and imprisonment for up to 1 year for each violation. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of the rule and seizing any imminently hazardous chemical substance. Section 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies or Federal facilities. In particular, EPA may proceed against individuals who report false or misleading information or cause it to be reported.

H. Business Confidentiality

Pursuant to section 14 of TSCA, a person may assert a claim of business confidentiality for any public comments submitted to EPA in connection with the proposed rule. Any person who submits a public comment for which a claim of confidentiality has been made must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons may claim information in comments confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of business confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information in comments at the time it is submitted to EPA, EPA will make the information public without further notice to that person by placing the comments in the public docket for this rulemaking.

I. Hearing Procedures

EPA will hold an informal hearing at a time and place announced at a later date in the **Federal Register.** Any informal hearing will be conducted in accordance with EPA's "Procedures for Conducting Rulemaking Under Section 6 of the Toxic Substances Control Act" (40 CFR part 750). Persons or organizations desiring to participate in the informal hearing must file a written request to participate. The written request to participate must be sent to the Environmental Assistance Division at the address listed under FOR FURTHER INFORMATION CONTACT. The written request to participate must include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a non-binding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed.

J. Official Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–62128). A public version of the record, without any information claimed as confidential business information, is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located at EPA headquarters, in Rm. NE–B607, 401 M St., SW., Washington, DC. 20460.

The rulemaking record contains information considered by EPA in developing this proposed rule. The record includes: (1) All Federal Register notices, (2) relevant support documents, (3) reports, (4) memoranda and letters, and (5) hearing transcripts responses to comments, and other documents related to this rulemaking.

The following is a list of documents which the Agency relied upon while developing this proposed regulation and can be found in the docket. Other documents, not listed here, such as those submitted with written comments from interested parties, are contained in the TSCA Docket office as well. The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of the rule will also be contained in the public docket. The drafts of the final rule submitted for OMB review before promulgation will also be placed into the public docket.

(1) Committee on the Institutional Means for Assessment of Risks to Public Health - Commission on Life Sciences - National Research Council. 1983. *Risk Assessment in the Federal Government: Managing the Process.* National Academy Press, Washington D.C.

(2) DOL, OSHA. 1993. Lead Exposure in Construction; Interim Final Rule. May 4, 1993. 29 CFR Part 1926.

(3) HUD, Office of Public and Indian Housing, 1990. *Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing.* (September, 1990, pages 87,89, A14-111 revised May 1991).

(4) HUD, Office of Policy Development and Research, 1991. *The HUD Lead-Based Paint Abatement Demonstration (FHA).* (August 1991).

(5) HUD, Office of Public and Indian Housing. 1992. *Lead-Based Paint Risk Assessment Protocol.* (September 1992).

(6) SOEH, (Society for Occupational and Environmental Health). *Protective Work Practices for Lead-Based Paint Abatement. Draft for Final Review.*

(7) State of California [Sacramento], Department of Transportation. 1982. *Long-Term Environmental Evaluation of Paint Residue and Blast Cleaning Abrasives from the Middle River Bridge Repainting Project.* (July 1982).

(8) USEPA. 1992. *EPA Model Lead Abatement Training Course for Supervisors and Contractors: Instructor Manual. (July 1992).*

(9) USEPA. 1993. *Lead Inspector Training - Model Training Course Curriculum: Instructor Manual.* (March 1993).

(10) USEPA, OPPT, CMD, TPB. 1992. *Applicability of RCRA Disposal Requirements to Lead-Based Paint Abatement Wastes: Final Report.* (October 1992).

(11) USEPA, OPPTS. 1993. *Residential Sampling for Lead: Draft Protocols for Lead Dust and Soil Sampling* (June 23, 1993).

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under E.O. 12866, (58 FR 51735, October 4, 1993), the Agency must determine whether regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines "a significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100

million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the Presidents priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this rule is a "significant regulatory action" because it will have an annual effect on the economy of over $100 million annually. As such, this action was submitted to OMB for review, and any comments or changes made in response to OMB suggestions or recommendations, have been documented in the public record.

B. Regulatory Flexibility Act

(1). *Introduction.* The Regulatory Flexibility Act of 1980 (RFA) requires regulators to analyze impacts on small entities. EPA conducted such an analysis, including it as part of the RIA. Based on this analysis of available data, EPA preliminarily concludes that the proposed rule should not place undue burden on small business. The analysis is summarized below.

(2). *Impacts on Small Businesses.* EPA assessed potential impacts, both absolute and relative burden, on small abatement firms in the construction industry. To examine the potential impacts of the proposed rule on small abatement establishments, compliance costs as a percentage of operating costs were estimated for both small and large firms and then compared to determine if small firms are more adversely impacted than large firms.

The compliance costs consist of two components: (1) Licensing and training costs for workers and supervisors, as well as licensing costs for firms, and (2) incremental costs of performance standards for abatement procedures. These two components coincide with the two decision points faced by firms interested in performing lead-based paint abatement work (including soil abatement). In order to be a "player" in this industry, a firm must be licensed and its employees must be trained and certified. It is likely that a firm will incur these expenses in anticipation of work, based on its assessment of the future demand for such services, its competition, and the price it will be able to charge. Therefore, the firm may incur the costs with no opportunity to recoup them, thus decreasing its profits.

The second set of costs, those resulting from performance standards, are of a different nature. The firms that do lead abatement work also perform similar work in settings that do not involve lead and are not affected by the proposed rule. These costs occur at the second decision point. They will be incurred by a firm only if it chooses to undertake a given lead-based paint job. In each case, the firm can determine the impact of the performance standards on its sales and profit levels. If the impact will be undesirable (e.g., decrease profit levels), the firm can decline the work. In this voluntary setting, the performance standards will not have an impact on the profits of small businesses. Likewise, owners of property will incur the performance standards costs only if abatements are in their benefit.

A comparison of incremental training and licensing costs to the estimated operating costs for an average small firm, for each SIC group involved with lead abatement, is shown in Table 7 below. These SIC groups cover abatements in residential, public, commercial, and industrial buildings, as well as steel structure abatement and deleading. Assuming that none of the training and licensing costs are shifted forward in the form of higher prices, the ratio of compliance costs to operating costs for small establishments range between 1.2 and 3.2 percent. Cost ratios are similarly estimated for large establishments in Table 8 below. For large firms, the ratios tend to be slightly lower, ranging from1.0 to 2.3 percent. For both large and small establishments, the largest cost ratio occurs for SIC 1721, painting contractors. However, for these firms, a large non-lead paint market is available. In all cases, compliance costs equal a small percentage of operating costs.

While this shifting of costs will alleviate the burden on abatement and deleading firms, the incremental costs of the regulations may affect residential and commercial building owners. Consistent with the arguments presented above, under this proposed rule abatement is a voluntary action. As such, a landlord is unlikely to undertake an abatement unless he or she is able to pass the cost on to his or her tenants or otherwise recoup the costs in terms of higher property values. EPA is concerned about the possibility that landlords of marginally profitable property, under the threat of civil suits may chose the alternative of abandoning the property rather than incur the cost of abatement. EPA solicits comments providing data or methods any such effects on the removal target housing from the market.

An alternative indicator which demonstrates potential impacts on small abatement firms focuses on profitability. EPA subtracted estimated establishment compliance costs from average profits per establishment to determine post-compliance profits. This calculation was also performed separately for small and large establishments for the same SIC codes identified above assuming Scenario 1 (See Tables 9 and 10 below). The estimated average adjusted profits for small establishments in two of the nine affected industry sectors become negative. One of these sectors, Miscellaneous Trade Contractors, was assumed as the most likely to perform a high frequency of very costly soil abatement projects; thus, compliance costs exceeded profits by more than a factor of 10. For 3 other sectors, compliance costs represented more than 50 percent of abatement establishment profits. For large firms, the results of this calculation indicated the typical large firm to remain profitable in all sectors. Thus, based on the profitability indicator size of deleading firms entering the abatement industry may be impacted by this proposed rule.

These calculations on profits assume all costs were absorbed by affected firms. This is more reasonable in the short run than in the long run. EPA does not have the necessary information to ascertain the cost pass through rate and resulting impacts on individual firms in the short run. Also, the analysis was constrained to use SIC data that are from a set of firms that may be different from firms complying with this proposed rule and, therefore, the financial information may not be representative of potential abatement firms. EPA solicits comments on available data to estimate these impacts.

The two indicators presented above were selected to present the likely bounds of the impacts associated with the proposed rule. The actual impact will likely lie somewhere between these extremes.

The comparison of impacts on small and large training providers was not performed for two reasons. Except for the RLTCs, most training providers are small, so there would be no differential effect based on size of the firm. In addition, it is likely that the training providers will pass the additional costs on to their trainees. Since the changes will be required by Federal regulations, they will apply to all training providers. Second, there will be heightened

concern about lead-based paint hazards and thus a greater willingness to pay for trained personnel who will presumably provide higher quality services. In fact, these regulations are likely to create a market for training services and thus will be beneficial to small businesses.

Table 7.—Impacts on Operating Costs for Small Establishments By SIC Code

Scenario 2 (XRF=6, Soil=2,000 ppm)

SIC Codes	Operating Costs Per Establishment	Compliance Costs Per Establishment	Compliance Cost/Operating Costs
1541 Industrial Buildings and Warehouses	$475,390	$6,641	1.4%
1542 Other Nonresidential Buildings	418,475	6,867	1.6%
1611 Highway and Street Construction Contractors	543,130	6,533	1.2%
1622 Bridge, Tunnel and Elevated Highway Contractors	646,332	9,206	1.4%
1721 Painting Contractors	142,568	4,508	3.2%
1751 Carpentry Work Contractors	170,404	4,341	2.6%
1791 Structural Steel Erection Contractors	384,631	7,870	2.1%
1795 Wrecking and Demolition	299,717	6,199	2.1%
1799 Misc. Trade Contractors, NEC	241,250	5,530	2.3%

Source: "Title X Sections 402 and 404 Regulatory Impact Analysis," U.S. EPA, Office of Pollution Prevention and Toxics, Regulatory Impacts Branch.

Table 8.—Impacts on Operating Costs for Large Establishments By SIC Code

Scenario 2 (XRF=6, Soil=2,000 ppm)

SIC Codes	Operating Costs Per Establishment	Compliance Costs Per Establishment	Compliance Cost/Operating Costs
1541 Industrial Buildings and Warehouses	$5,294,916	$71,424	1.4%
1542 Other Nonresidential Buildings	4,773,679	65,550	1.4%
1611 Highway and Street Construction Contractors	6,840,501	68,730	1.0%
1622 Bridge, Tunnel and Elevated Highway Contractors	6,754,332	87,379	1.3%
1721 Painting Contractors	1,894,301	43,797	2.3%
1751 Carpentry Work Contractors	1,103,563	22,702	2.1%
1791 Structural Steel Erection Contractors	3,090,078	59,044	1.9%
1795 Wrecking and Demolition	3,043,743	60,056	2.0%
1799 Misc. Trade Contractors, NEC	2,354,724	48,346	2.1%

Source: "Title X Sections 402 and 404 Regulatory Impact Analysis," U.S. EPA, Office of Pollution Prevention and Toxics, Regulatory Impacts Branch.

Table 9.—Statistics of Small Establishments By SIC Code

(XRF≥1, Soil≥500 ppm)

SIC Codes	No. of Constr. Wkrs. Per Estab.*	Constr. Payroll/ Estab. ($000)	Total Sales per Estab.	Profits per Estab.	EPA Costs of Initial Training & Licensing*	EPA Incremental Costs of Standards	Total Costs	Profits Minus Costs per Estab.
1541	4.1	$89	$494,683	$19,293	$7,123	$9,365	$16,488	$2,805
1542	3.9	75	436,366	17,891	6,796	2,710	9,506	8,385
1611	3.7	102	568,128	24,998	7,075	140	7,215	17,783
1622	5.3	133	671,863	25,531	9,807	1,579	11,386	14,145
1721	2.5	45	153,961	11,393	4,842	7,201	12,043	(650)
1751	2.4	44	182,837	12,433	4,581	2,773	7,354	5,079
1791	4.5	100	409,182	24,551	8,369	349	8,718	15,833
1795	3.5	68	318,171	18,454	6,142	1,542	7,684	10,770
1799	3.1	54	258,298	17,048	5,488	306,911	312,399	(295,351)*
*1:2 Supervisor:Worker Ratio								

Source: "Title X Sections 402 and 404 Regulatory Impact Analysis," U.S. EPA, Office of Pollution Prevention and Toxics, Regulatory Impacts Branch and CONSAD (1993).

Table 10.—Statistics of Large Establishments By SIC Code
(XRF≥1, Soil≥500 ppm)

SIC Codes	No. of Const. Wrks. Per Estab.	Constr. Payroll Per Estab. ($000)	Total Sales Per Estab.	Profits Per Estab.	EPA Costs of Initial Training & Licensing*	EPA Incremental Costs of Standards	Total Costs	Profits Minus Costs Per Estab.
1541	54.2	$1,335	$5,567,735	$272,819	$75,788	$8,500	$84,288	$188,531
1542	45.1	1,035	5,030,220	256,541	63,292	2,763	6,055	190,486
1611	47.3	1,418	7,253,978	413,477	73,932	142	74,074	339,403
1622	60.2	1,559	7,102,347	348,015	94,170	1,597	95,767	252,248
1721	31.1	743	2,081,649	187,348	46,338	7,285	53,623	133,725
1751	16.0	341	1,190,467	86,904	24,011	2,957	26,968	59,936
1791	40.6	1,122	3,393,413	303,335	63,543	344	63,887	239,448
1795	41.3	797	3,279,895	236,152	58,080	1,505	59,585	176,567
1799	33.2	663	2,565,059	210,335	46,767	5,250	52,017	158,318

* 1:3 Supervisor:Worker Ratio

Source: "Title X Sections 402 and 404 Regulatory Impact Analysis," U.S. EPA, Office of Pollution Prevention and Toxics, Regulatory Impacts Branch and CONSAD (1993) and CONSAD (1993).

C. Paperwork Reduction Act

The Information Collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 15 USC 2682 and 15 USC 2688) and a copy may be obtained from Sandy Farmer, Information Policy Branch, (2136) EPA, 401 M st., SW Washington DC 20460, or by calling (202) 260–2740.

This collection of information has an estimated reporting burden averaging 2.67 hours per response while the estimated recordkeeping burden was estimated to be 0.32 hours per response. These estimates include time to review instructions, search existing data sources, gather and maintain the data needed, and complete the collection information.

Send comments regarding the burden estimate, or any other aspect of this collection of information including suggestions for reducing this burden to Chief, Information Policy Branch, (2136) EPA 401 M St., S.W., Washington, DC 20460, marked "Attention: Desk Officer for EPA." The final rule will respond to OMB or public comments on the information collection requirements contained in this proposal.

This regulation includes a number of reporting and record keeping requirements, which are designed to help EPA verify compliance with the rule after it is promulgated. This analysis identifies the reporting and record keeping requirements specified in the proposed rule and estimates the burden and cost that these requirements will impose.

This regulation will add to the reporting and recordkeeping burden for three entities: states, training providers, and lead inspection and abatement firms. Where applicable, burden numbers were based on those developed for the Asbestos Model Accreditation Plan (MAP)(U.S. EPA, 1993b). In all other cases, burden numbers were estimated.

Reporting burdens presented are classified into two groups: initial and annual. The burden associated with the start-up efforts of states, training providers, and lead inspection and abatement firms are referred to as the initial burden. For the purpose of this analysis, all of these efforts are assumed to be completed during 1994, the first year of the rule. The burden associated with reporting requirements that will be required on an annual basis are referred to as the annual burden and are presented based on the projected activity level for 1994. Initial and annual estimates are combined to project the burden and costs that will be imposed during the first year of the rule, while the annual costs alone serve as an estimate of the burden level expected during the second year (and subsequent years) of the rule.

The first and second year burden estimates for all entities subject to reporting requirements under this rule; were estimated to two abatement scenarios of XRF≥1, soil-lead≥500 ppm, and for XRF≥6, soil-lead ≥2,000 ppm. With regard to the first abatement scenario, during the initial year of the rule the burden is projected to be 11.4 million hours and $228.8 million. Assuming all entities seeking accreditation and certification are in place during the first year of the rule, the burden estimate associatedwith the second year (and all subsequent years) is projected to be 10.8 million hours and $217.6 million. At XRF≥6, soil-lead≥2000 ppm, the total burden for the initial year is estimated to be 6.2 million hours and $126.1 million. For the second year, and subsequent years, the total burden is 6.1 million hours and $120.9 million.

The majority of the burden, for both abatement scenarios, falls on lead abatement firms and is driven by the reporting requirements associated with on-site lead-based paint activities. Because this burden is driven by the number of lead-based paint projects, it is expected to decline substantially in subsequent years.

The total annual recordkeeping costs for the XRF ≥1 and soil-lead ≥500 ppm represent the worst-case scenario due to the number of events that occur. Total annual costs are estimated to be approximately $1.3 million.

List of Subjects in 40 CFR Part 745

Environmental protection, Abatement, Housing renovation, Lead, Lead-based paint, Reporting and recordkeeping requirements.

Dated: August 18, 1994.

Carol M. Browner,

Administrator.

Therefore, it is proposed that proposed 40 CFR part 745 be amended as follows:

1. The authority citation for proposed part 745 would continue to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2681–2692.

2. By adding subparts L and Q to read as follows:

Subpart L—Lead-Based Paint Activities

Sec.

745.220 Scope and applicability.
745.223 Definitions.

745.225 Accreditation of training programs.
745.226 Certification of individuals and firms engaged in lead-based paint activities.
745.228 Standards for conducting lead-based paint activities.
745.230 Lead-based paint activities requirements.
745.235 Enforcement.
745.237 Inspections.
745.239 Effective dates.
* * * * *

Subpart Q—State Programs

745.320 Scope and purpose.
745.323 Definitions.
745.325 Authorization of State Programs.
745.327 Authorization of Indian Tribal Programs.
745.330 Grants.
745.339 Effective dates.

Subpart L—Lead-based Paint Activities

§ 745.220 Scope and applicability.

This subpart contains procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and standards for performing such activities. This subpart also contains requirements that all lead-based paint activities shall be performed by certified individuals. This subpart is applicable to all individuals and firms who are engaged in lead-based paint activities as defined in § 745.223, except persons who perform these activities within residences which they own, unless the residence is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being conducted. This subpart is applicable only in those states or Indian Reservations that do not have an authorized state program pursuant to § 745.325 or § 745.327 respectively of Subpart Q of this part. Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof, shall be subject to, and comply with all Federal, State, interstate, and local requirements, both substantive and procedural, including the requirements of this subpart regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

§ 745.223 Definitions.

For purposes of this subpart, the definitions of § 745.3 apply. In addition, the following definitions apply:

Abatement means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Administrator under Title IV of TSCA. Such term includes:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil.

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures. Abatement shall be presumed in the following circumstances:

(i) Projects for which there is a written contract stating that an individual or firm will be conducting activities in or to a dwelling unit that will permanently eliminate lead-based paint hazards.

(ii) Projects involving the permanent elimination of lead-based paint or lead contaminated soil and conducted by firms or individuals certified in accordance with § 745.226.

(iii) Projects involving the permanent elimination of lead-based paint or lead-contaminated soil and conducted by firms or individuals who, through their company name, promotional literature, or otherwise advertise or hold themselves out to be lead abatement professionals.

(3) Abatement does not include renovation and remodeling, or landscaping activities whose primary intent is not to permanently eliminate lead-based paint hazards, but is instead to repair, restore, or remodel a given structure or dwelling, even though these activities may incidently result in a reduction in lead-based paint hazards.

Accredited training program means a training program that has been accredited by an approving authority to provide training for individuals engaged in lead-based paint activities.

Approving authority means the U.S. Environmental Protection Agency or, in the case of a state or tribal program authorized by EPA under subpart Q of this part, the appropriate State agency or Tribal authority.

Area means a portion of a unit such as a room, closet, pantry, hall, or portion of a room (such as the dining area of a kitchen/dining room).

Available means reachable by telephone, either directly or through a pager or answering service, at all times when abatement activities are being conducted and able to be present at the work site in no more than 2 hours.

Certified contractor means a contractor, inspector, or supervisor who has completed a training program certified by the appropriate Federal agency and has met any other requirements for certification or licensure established by such agency or who has been certified by any State through a program which has been found by such Federal agency to be at least as protective as the Federal certification program; and workers or designers who have fully met training requirements established by the appropriate Federal agency.

Certified firm means a company, partnership, corporation, sole proprietorship, association, or other business entity, which has submitted a letter signed by the owner to the approving authority stating that:

(1) All its employees or subcontractors performing lead-based paint activities have each individually received the required training and certification from the appropriate approving authority.

(2) The certified firm and its employees or subcontractors will perform lead-based paint activities in accordance with all applicable local, State and Federal standards, including all applicable recordkeeping requirements.

(3) A certified supervisor will be assigned and available to all the firm's abatement, deleading, and demolition projects.

Certified inspector/risk assessor for target housing and public buildings means an individual who has been trained by an accredited training program and certified by an approving authority to act as an inspector and risk assessor for target housing and public buildings.

Certified inspector technician for target housing and public buildings means an individual who has been trained by an accredited training program and certified by an approving authority to perform inspections in target housing and public buildings solely for the purpose of determining the presence of lead-based paint through the use of on-site testing, such as XRF analyzers, and the collection of samples for laboratory analysis, and to perform inspections for the presence of lead-based paint, as well as sampling for lead in dust and soil for the purposes of abatement cleanup, waste disposal, and clearance testing.

Certified lead worker for commercial buildings and superstructures means an individual who has been trained by an accredited training program and certified by an approving authority to perform deleading, lead removal, and demolition activities on commercial buildings and superstructures.

Certified lead worker for target housing and public buildings means an individual who has completed training from an accredited training program and has been certified by an approving authority to perform abatement activities in target housing and public buildings.

Certified planner/project designer for target housing and public buildings means an individual who has been trained by an accredited training program and certified by an approving authority to plan and design abatement projects in target housing and public buildings.

Certified supervisor for commercial buildings and superstructures means an individual who has been trained by an accredited training program and certified by an approving authority to supervise lead-based paint activities and to identify the presence of lead-based paint or other lead-based surface coatings in commercial buildings and on superstructures. The supervisor is also responsible for the planning and oversight of lead-based paint activities associated with commercial buildings and superstructures.

Certified supervisor for target housing and public buildings means an individual who has been trained by an accredited training program and certified by an approving authority to supervise and conduct abatements in target housing and public buildings.

Commercial building means any building used primarily for commercial or industrial activity, which is generally not open to the public, or occupied or visited by children, including but not limited to, warehouses, factories, storage facilities, aircraft hangers, garages, and wholesale distribution facilities.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Component or building component means specific design or structural elements or fixtures of a building or residential dwelling which are distinguished from each other by form, function, and location. These include, but are not limited to interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplace, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim, including sashes, window heads, jambs, sills, and stools, built-in cabinets, columns, beams, bathroom vanities, counter tops and air conditioners; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, facias, rake boards, corner-boards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills, casings, sashes and wells, and air conditioners.

Course test blue print means written documentation of the proportion of course test questions devoted to each major topic in the course curriculum.

Deleading means activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities in commercial buildings, bridges, or other structures or superstructures.

Demolition means the act of pulling down or destroying any building or structure.

Deteriorated paint means paint which is cracking, flaking, chipping, or peeling from a building component.

Discipline means one of the specific types or categories of lead-based paint activity enumerated in this subpart for which individuals may receive training from accredited programs and become certified by approving authorities. For example, "lead worker in commercial buildings and superstructures" is a discipline.

Distinct painting history means the record of application, over time, of paint or other surface coatings to a component of a building structure.

Encapsulation is a process that makes lead-based paint inaccessible, by providing a barrier between the lead-based paint and the environment, with this barrier being formed using a liquid applied coating or an adhesively bonded material, and with the primary means of attachment is by the bonding of the product to the surface either by itself of through the use of an adhesive.

Firm means any company, partnership, corporation, sole proprietorship, association, or other business entity.

Hands-on assessment means an evaluation which tests the trainees' ability to perform specified work practices and procedures satisfactorily.

Hazardous waste means any waste as defined in 40 CFR 261.3.

Historical records means documentation which identifies the material make-up (including brand, color type, lead content) and dates of application of paint and other surface coatings used in target housing, public and commercial buildings, and superstructures.

Inspection means a surface-by-surface investigation for the presence of lead-based paint conducted by a certified inspector technician or inspector/risk assessor according to the procedures in § 745.228(a).

Interim certification means the status of an individual who has successfully completed the appropriate training course in a discipline from an accredited training program, but has not yet received formal certification in that discipline from an approving authority. Interim certifications expire 6 months following the completion of the training course.

Interim controls means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Lead-based paint activities means (1) in the case of target housing, risk assessment, inspection, and abatement; and (2) in the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure, identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition.

Lead-contaminated soil means bare soil on residential real property that contains lead at or in excess of the levels determined to be hazardous by an inspector/risk assessor certified under this regulation.

Living area means areas of a target housing unit most often frequented by children under the age of 6, including, but not limited to living rooms, kitchen areas, dens, play rooms, and children bedrooms.

Personal protection equipment (PPE) means specialized clothing and equipment including, but not limited to respirators, masks, gloves, designed to protect workers against chemical and physical hazards.

Principal instructor means the individual who has the primary responsibility for organizing and delivering a particular course.

Public building means any building constructed prior to 1978, except target housing, which is generally open to the public or occupied or visited by children, including but not limited to, schools, daycare centers, museums, airport terminals, hospitals, stores, restaurants, office buildings, convention centers, and government buildings.

Recognized laboratory means any environmental laboratory recognized by the Agency as being capable of performing an analysis for lead compounds in paint, soil, and dust.

Residential dwelling means (1) a single-family dwelling, including attached structures such as porches and stoops; or (2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Risk assessment means an on-site investigation conducted by a certified inspector/risk assessor according to the procedures at § 745.228(b) to determine the existence, nature, severity, and location of lead-based paint hazards and the provision to the property owner/occupant of a report explaining the results of the investigation and providing options for reducing lead-based paint hazards with a rationale for those options.

Room means an enclosed or semi-enclosed living space within a unit or dwelling unit.

Student T-test is a statistical analysis used to determine if the difference between pre- and post-abatement soil lead levels are significantly different from each other. A confidence limit of 95 percent is used to establish statistical significance.

Superstructure means a large steel or other industrial structure including, but not limited to bridges or water towers which may contain lead-based paint.

Training curriculum means an established set of course topics that provide specialized knowledge and skills that must be taught in an accredited training program for a particular discipline.

Training hour means the number of hours spent in training activities in an accredited training program, including, but not limited to, hours devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

Training manager means the individual responsible for administering a training program and monitoring the performance of the principal instructors, work practice instructors, and guest instructors.

Train-the-trainer course means a 40-hour (or longer) course of study which provides instruction in the planning and teaching of adult education courses.

Unit means a room or connected group of rooms used or intended to be used by a single tenant or owner.

Visual inspection for clearance testing means the visual examination of the abatement site following an abatement action for evidence that the abatement has been successfully completed, as indicated by the absence of visible residue, dust and debris.

Visual inspection for risk assessment means the visual examination of a unit to locate the existence of deteriorating paint.

Window sill means the portion of the horizontal window ledge that protrudes into the interior of the room, adjacent to the window sash when the window is closed.

Window stool means the flat, horizontal molding fitted over the window sill, on the window interior, between jambs, which comes in contact with the bottom of the rail of the lower operating sash and the window sill.

Window well means the portion of the horizontal widow sill that receives the window sash when the window is closed; often located between the storm window and the interior window sash.

Work practice instructor means the individual(s) who are responsible for teaching particular skills in a specific course.

§ 745.225 Accreditation of training programs.

(a) *Application process.* For the purposes of certification, approving authorities shall only recognize training and refresher training received from an accredited training program. The following are procedures a training program shall follow to receive accreditation from an approving authority.

(1) A training program may seek accreditation to offer courses in any of the following disciplines — target housing and public buildings: inspector technicians, inspector/risk assessors, supervisors, planner/project designers, and workers; commercial buildings and superstructures: supervisors and workers. The training program may also seek accreditation to offer refresher courses for each of the course disciplines.

(2) A training program seeking accreditation shall submit to the approving authority a written application containing the following information:

(i) The training program's name, address, and telephone number.

(ii) A list of courses for which it is applying for accreditation.

(iii) A statement, signed by the training program manager, which certifies that the training program meets the minimum requirements established in paragraph (b) of this section.

(iv) A signed statement by the training program manager certifying that each instructor meets the qualifications described in paragraph (b)(1), (b)(2), or (b)(3) of this section, as well as a list of the topics/skill areas to be taught by each instructor.

(v) Either:

(A) A statement signed by the training manager, which certifies that the program will use, if available, EPA developed model training materials; or

(B) A copy of the student manuals and instructor manuals to be used for each course; and

(C) A copy of the course agenda, which includes the time allocation for each course topic.

(vi) A copy of the test blueprint, which describes the proportion of course test questions devoted to each major course topic.

(vii) A description of the facilities and equipment available for lecture and hands-on training.

(viii) A description of the procedures for conducting the assessment of hands-on skills.

(ix) A copy of the quality control plan as described in paragraph (b)(10) of this section.

(x) An example of numbered certificates, as described in paragraph (b)(9) of this section, to be issued to students who successfully complete the training program.

(3) The approving authority shall approve or disapprove a request for accreditation within 180 days of receiving an application from a training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the approving authority may, at its discretion, work with training programs to address inadequacies in the application for accreditation. The approving authority may also request additional materials retained under paragraph (h) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time.

(4) A training program may offer courses or refresher courses in as many training disciplines as it chooses, but shall seek accreditation for each discipline. A training program may seek accreditation for additional disciplines at any time as long as the program can demonstrate that it meets the minimum requirements of paragraph (b) of this section.

(b) *Minimum requirements for the accreditation of training programs.* For a training program to obtain accreditation from an approving authority to teach lead-based paint

activities, the program shall demonstrate, through its application materials, that it meets the following minimum requirements for each discipline for which the program is seeking accreditation:

(1) The training program shall employ a training manager who:

(i) Has at least 2 years classroom experience in teaching workers/adults; or

(ii) Has a bachelor's or graduate level degree in building construction technology, engineering, industrial hygiene, safety, or public health; or

(iii) Has 4 years experience in managing an occupational health and safety training program that specialized in environmental hazards; and

(iv) Has completed a 40–hour train-the-trainer course that provides instruction in the planning and teaching of any adult education course; or has obtained a bachelor's or graduate level degree in adult education from an accredited college or university.

(2) The training program shall employ a qualified principal instructor for each course who:

(i) Has completed a 40–hour train-the-trainer course, or has obtained a degree in adult education from an accredited college or university, or has at least 2 years of classroom experience in teaching workers/adults.

(ii) Has successfully completed at least 24 hours of any lead-specific training.

(iii) Has 2 years of experience in the construction trade, including, but not limited to, lead or asbestos abatement, painting, carpentry, or renovation and remodeling.

(3) The training program shall employ qualified work practice instructors who are responsible for teaching particular skills in a specific course and who:

(i) Have met all of the requirements listed in paragraph (b)(2) of this section.

(ii) Have had 1 additional year of experience in a relevant construction trade, including but not limited to, lead or asbestos abatement, painting, carpentry, or renovation and remodeling.

(4) The training program shall, for each course offered, designate a principal instructor. Principal instructors are responsible for the organization of the course and oversight of the teaching of all course material. Additional instructors shall be designated as either work practice instructors or guest instructors.

(5) The following documents shall be recognized by approving authorities as proof that training managers, principal instructors, and work practice instructors meet the relevant educational, work experience, and training requirements specifically listed in paragraphs (b)(1), (b)(2), and (b)(3) of this section:

(i) Official academic transcripts as proof of meeting the educational requirements.

(ii) Resumes, letters of reference, lead certification in another State, or documentation of work experience as proof of meeting the work experience requirements.

(iii) Certificates from train-the-trainer courses and lead-specific training courses as proof of meeting the training requirements.

(6) The training program shall provide adequate facilities for lecture and hands-on training and assessment. This includes providing training equipment that reflects current work practices, and maintaining or updating the equipment and facilities as needed.

(7) The training program shall provide training courses that meet the following training hour requirements:

(i) The inspector technician course for target housing and public buildings shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training.

(ii) The inspector/risk assessor course for target housing and public buildings shall last a minimum of 40 training hours [inspector technician (24 hours) plus inspector/risk assessor (16 hours) equals a total of 40 hours], with a minimum of 8 hours devoted to hands-on training which includes site visits.

(iii) The supervisor course for target housing and public buildings shall last a minimum of 40 training hours, with a minimum of 8 hours devoted to hands-on training.

(iv) The planner/project designer course for target housing and public buildings shall last a minimum of 56 training hours [supervisor course (40 hours) plus planner/project designer course (16 hours) equals a total of 56 hours], with a minimum of 4 hours devoted to hands-on training which include site visits.

(v) The lead abatement worker course for target housing and public buildings shall last a minimum of 32 training hours, with a minimum of 10 hours devoted to hands-on training.

(vi) The supervisor course for commercial buildings and superstructures shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on training.

(vii) The lead worker course for commercial buildings and superstructures shall last a minimum of 32 training hours, with a minimum of 10 hours devoted to hands-on training.

(8) For each course it offers, the training program shall conduct a course test at the completion of each course and a hands-on skills assessment. The hands-on assessment and the course test will be used to evaluate trainee competency and proficiency. The hands-on assessment and a course test must be successfully completed for an individual to pass any course.

(i) The hands-on skills assessment is an evaluation of the effectiveness of the hands-on training which shall test the ability of the trainees to demonstrate satisfactory performance of work practices and procedures specified in paragraph (c) of this section, as well as any other skills demonstrated in the course. The training manager is responsible for maintaining the validity and integrity of the assessment to ensure that it accurately evaluates the trainee's performance of these work practices and procedures.

(ii) The course test is an evaluation of the overall effectiveness of the training which shall test the trainee's knowledge and retention of the topics covered during the course. Seventy percent shall be considered the passing score on the course test. The training manager is responsible for maintaining the validity and integrity of the course to ensure that it accurately evaluates the trainee's knowledge and retention of the course topics.

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(9) Training programs shall issue unique course completion certificates to each individual who successfully completes the course requirements. The course completion certificate shall include:

(i) A unique certificate number.

(ii) The name, a unique identification number, and address of the individual.

(iii) The name of the particular course that the individual completed.

(iv) Dates of course completion/test passage.

(v) Expiration date of interim certification, which shall be 6 months from the date of course completion.

(vi) Name, address, and telephone number of the training program.

(vii) A certified statement signed by the training manager which certifies that the training received complies with the requirements of this subpart. The statement must read as follows:

Under civil and criminal penalties of law for the making or submission of false or fraudulent statements or representations (18 U.S.C. 1001 and 15 U.S.C. 2615), I certify that this training complies with all applicable requirements of Title IV of TSCA, 40 CFR

part 745, and any other applicable Federal, state, or local requirements.

(10) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain or improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and course test to reflect innovations in the field.

(ii) Procedures for the training manager's annual review of instructor competency.

(11) Training programs shall offer courses which teach the standards for conducting lead-based paint activities contained in § 745.228, and other such standards adopted by the EPA, or the authorized state from which the program received accreditation.

(12) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in paragraph (b) of this section.

(c) *Minimum training curricula requirements.* To be accredited, training programs must ensure that their courses of study for the various lead-based paint activities disciplines cover the following subject areas. Listed requirements ending in an asterisk (*) indicate areas that require hands-on experience as an integral component of the course.

(1) *Target housing and public buildings - inspector technician.*

(i) Background information on lead.

(ii) Health effects of lead.

(iii) Regulatory review. This entails a discussion of applicable Federal, state and local regulations that pertain to lead-based paint.

(iv) Roles and responsibility of lead-based paint inspector.

(v) Lead-based paint inspection methods.*

(vi) Dust and soil sampling methodologies.*

(vii) Formulation and implementation of the final inspection report.*

(2) *Target housing and public buildings- inspector/risk assessors.*

(i) All information taught in the inspector technician course as listed in paragraph (c)(1) of this section.

(ii) Background information to perform risk assessment.

(iii) Visual inspection.*

(iv) Risk assessment report form.*

(v) Sampling and inspection guidelines.*

(vi) Sampling for other sources of lead exposure.

(vii) Interpretation of sampling results.

(viii) Preparation of final report.*

(ix) Recommendations to abate or reduce lead-based paint hazards including instruction on when interim controls are appropriate.

(x) Development of an interim control plan.

(xi) Recordkeeping.

(xii) Identification of the lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil.

(3) *Target housing and public building - supervisor.*

(i) Background information on lead.

(ii) Regulatory background, Federal, state and local.

(iii) Legal and insurance issues relating to lead-based paint abatement.

(iv) Development of pre-abatement work plan.*

(v) Hazard recognition and control.*

(vi) Respiratory protection and protective clothing.*

(vii) Employee information and training.

(viii) Project management.

(ix) Contract specifications.

(x) Supervisory techniques.

(xi) Lead paint abatement or lead hazard reduction including prohibited methods.*

(xii) Interior dust abatement/clean-up or lead hazard reduction.*

(xiii) Soil and exterior dust abatement or lead hazard reduction.*

(xiv) Soil, dust, and air sampling.

(xv) Clearance standards and testing.

(xvi) Waste disposal.

(xvii) Community relations process.

(xviii) Cost estimation.

(xix) Recordkeeping.

(4) *Target housing and public buildings - planner/project designer.*

(i) All information taught in the supervisor course as listed in paragraph (c)(3) of this section.

(ii) Risk assessment/inspection report interpretation.*

(iii) Worker protection/worker safety.

(iv) Environmental safety.

(v) The following information on project design.*

(A) Integration with modernization projects.

(B) Design abatement or lead hazard reduction strategy.

(C) Cost estimation.

(D) Construction techniques.

(vi) Abatement and other lead hazard reduction methods.

(vii) Operations and maintenance planning.

(viii) Clean-up.

(ix) Clearance testing.*

(x) Waste disposal.

(xi) Insurance and liability.

(5) *Target housing and public buildings - lead abatement worker.*

(i) Background information and health effects of lead.

(ii) Sources of environmental lead contamination (paint, surface dust and soil, water, air, food, other).

(iii) Regulatory background, Federal, state and local.

(iv) Hazard recognition and control.*

(v) Respiratory protection.*

(vi) Personal hygiene.*

(vii) Lead-based paint abatement and lead hazard reduction methods.*

(viii) Interior dust abatement methods/clean-up or lead hazard reduction.*

(ix) Soil and exterior dust abatement methods or lead hazard reduction.*

(x) Waste disposal.*

(6) *Commercial buildings and superstructures - supervisor.*

(i) Background information on lead.

(ii) Sources of environmental lead contamination (paint, surface dust and soil, water, air, food, other).

(iii) Regulatory background, Federal, state and local.

(iv) Health effects.

(v) Identification of lead-based paint.*

(A) Historical information.

(B) Limited sampling procedures.

(C) Laboratory analysis.

(vi) Development of deleading work plan.*

(vii) Medical monitoring.

(viii) Respiratory protection.*

(ix) Work preparation procedures.*

(x) Clean up/waste disposal.

(xi) Exposure monitoring.

(xii) Environmental monitoring.*

(A) Soil, dust, and air sampling.

(B) [Reserved]

(xiii) Recordkeeping.

(xiv) Other safety and health hazards.

(xv) Paint removal operations pertaining to superstructures and commercial buildings, including:

(A) Power tools.

(B) Abrasive blasting.

(xvi) Welding, burning and torch cutting.

(xvii) Mechanical disturbance of lead.

(7) *Commercial buildings and superstructures - lead workers.*

(i) Background information on lead.

(ii) Regulatory review.

(iii) Health effects.

(iv) Medical monitoring.

(v) Control methods.*

(vi) Respiratory protection.*

(vii) Work preparation procedures.*

(viii) Personal hygiene.*

(ix) Clean up/waste disposal.*

(x) Exposure monitoring.

(xi) Recordkeeping.

(xii) Other safety and health hazards.

(xiii) Paint removal operations.

(A) Power tools and miscellaneous.

(B) Abrasive blasting.

(xiv) Welding, burning, and torch cutting.

(xv) Mechanical disturbance of lead.

(d) *Minimum requirements for the accreditation of refresher training programs.* (1) Training programs may seek accreditation to offer a refresher course for any course discipline for which they already have received accreditation or for which they are concurrently applying for accreditation. Training programs will not receive accreditation for a refresher course if they do not also receive accreditation for the corresponding course discipline.

(2) An accredited refresher training course shall address the following topics:

(i) An overview of key safety practices.

(ii) An update on current laws and regulations.

(iii) An update on current technologies related to lead-based paint activities.

(3) The course must include at least 7 training hours.

(4) Each student shall be required to pass a course test that covers all of the topics contained in the course. Passing students shall be provided with a course completion certificate.

(5) A training program seeking refresher course accreditation shall submit to the approving authority the following:

(i) The training program's name, address, and telephone number.

(ii) A list of courses for which it is applying for accreditation.

(iii) A copy of student manuals and instructor notebooks for the course.

(6) If a training program applies for accreditation of a refresher course concurrently with accreditation of the corresponding training course, the approving authority shall use the approval procedure described in paragraph (a)(4) of this section.

(7) If an application for refresher training authorization is received apart from an application for accreditation as described in paragraph (a)(4) of this section, the approving authority shall approve or disapprove a request for accreditation within 45 days of receiving the application. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. The approving authority may, at its discretion, work with training programs to address inadequacies in the application for accreditation. If a training program's application is disapproved, the program may reapply at any time.

(8) A training program may offer as many refresher training courses as it chooses, but shall seek accreditation for each course. A training program may seek accreditation for additional refresher training courses at any time.

(e) *Re-accreditation of training programs.* (1) If a training program meets the requirements of this section, the training program shall be re-accredited. Unless re-accredited, a training program's accreditation shall expire 3 years after the date of issuance.

(2) A training program seeking re-accreditation shall submit an application to the approving authority no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, the approving authority cannot guarantee the application will be reviewed and acted upon before the end of the 3–year period.

(3) The training program's application for re-accreditation shall contain:

(i) The training program's name, address, and telephone number.

(ii) A list of courses for which it is applying for re-accreditation.

(iii) A description of any changes or updates to the training facility or equipment.

(iv) The certified statement as described in paragraph (e)(4) of this section below.

(4) The training program's application for re-accreditation shall contain a statement signed by the training program manager which certifies that:

(i) The course materials, for each course, meet the requirements in paragraphs (c)(1) through (c)(7) of this section, as appropriate.

(ii) The training manager, principal instructors, and work practice instructors meet the qualifications in paragraphs (b)(1), (b)(2), and (b)(3) of this section.

(iii) The training program manager complies at all times with all requirements in paragraph (b) of this section.

(iv) The quality control program meets the requirements in paragraph (b)(11) of this section.

(v) The recordkeeping and reporting requirements of paragraph (h) of this section will be followed.

(5) An audit may be performed by the approving authority to verify the certified statement and the contents of the application.

(f) *Suspension, revocation, and modification of accredited training programs.* (1) The approving authority may after notice and an opportunity for hearing, suspend, revoke, or modify training program accreditation if a training program, training manager, or other person with supervisory authority over the training program, has:

(i) Misrepresented the contents of a training course to the approving authority and/or the student population.

(ii) Failed to submit required information or notifications in a timely manner.

(iii) Failed to maintain required records.

(iv) Falsified accreditation records, instructor qualifications, or other accreditation information.

(v) Failed to comply with the training standards and requirements in this section.

(vi) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(2) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(3) Training programs shall permit representatives of the approving authority to attend any training course, for the purpose of evaluation or monitoring of the course, without charge to the approving authority.

(g) *Procedures for suspension, revocation, or modification of training program accreditation.* (1) When an approving authority decides to suspend, revoke, or modify the accreditation of a training program, it shall notify the affected entity in writing of the following:

(i) The grounds upon which the suspension or withdrawal is based.

(ii) The commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive accreditation in the future.

(iv) Any additional conditions which the approving authority may impose.

(v) The opportunity and method for requesting a hearing prior to final approving authority action to suspend, revoke, or modify accreditation.

(2) If a hearing is requested by the accredited training program pursuant to paragraph (g)(1) of this section, the approving authority shall:

(i) Prior to the hearing, notify the affected entity of those assertions of law and fact upon which the action to suspend, revoke, or modify is based.

(ii) Provide the affected entity an opportunity to offer written statements in response to those assertions of law and facts, and any other explanations, comments, and arguments it deems relevant to the proposed action.

(iii) Provide the affected entity such other procedural opportunities as the

approving authority may deem appropriate to ensure a fair and impartial hearing.

(iv) Appoint an official of the approving authority as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific case.

(3) The Presiding Officer appointed pursuant to paragraph (g)(iv) of this section shall:

(i) Conduct a fair, orderly, and impartial hearing, within 90 days of the request for a hearing.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted pursuant to paragraph (g)(2) of this section.

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action subject to judicial review.

(4) If the approving authority determines that the public health, interest, or welfare warrants immediate action to suspend the accreditation of any training program prior to the opportunity for a hearing, it shall:

(i) Notify the affected entity of its intent to immediately suspend training program accreditation for the reasons listed in paragraph (f)(1) of this section. If a suspension, revocation, or modification notice has not previously been issued pursuant to paragraph (g)(1) of this section, it shall be issued at the same time the emergency suspension notice is issued.

(ii) Notify the affected entity in writing of the grounds upon which the immediate suspension is based and why it is necessary to suspend the entity's accreditation before an opportunity for a suspension, revocation, or modification hearing.

(iii) Notify the affected entity of the commencement date and duration of the immediate suspension.

(iv) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by the approving authority under this section, and any documents filed by an accredited training program in a hearing under this section, shall be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

(6) The public shall be notified of the suspension, revocation, or modification of training program accreditation through appropriate mechanisms developed by the authority.

(7) The approving authority shall maintain a list of parties whose accreditation has been suspended, revoked, or modified. This list shall be made available to the public upon request.

(h) *Training program recordkeeping requirements.* (1) Accredited training programs shall maintain, and make available to the approving authority if requested, the following records:

(i) All documents specified in paragraph (b)(5) of this section that demonstrate the qualifications listed in paragraphs (b)(1), (b)(2), and (b)(3) of this section of the training manager, principal instructors, and work practice instructors.

(ii) Current curriculum/course materials, and documents reflecting any changes made to these materials.

(iii) The course test blueprint.

(iv) Information on how the hands-on assessment is conducted including, but not limited to, who conducts the assessment, how the skills are graded, what facilities are used, and the pass/fail rate.

(v) The quality control plan as described in paragraph (b)(10) of this section.

(vi) Results of the student's hands-on skills assessments and course tests, and a copy of each student's course completion certificate.

(vii) Any other material not listed in (h)(1)(i) through (h)(1)(vi) of this paragraph that was submitted to the approving authority as part of the program's application for accreditation.

(2) The training program shall retain these records at the location (i.e., address) specified on the training program accreditation application for a minimum of 3 years 6 months.

(3) The training program shall notify the approving authority 30 days prior to relocating its business or transferring the records.

§ 745.226 Certification of individuals and firms engaged in lead-based paint activities.

(a) *Certification of individuals.* (1) Following the submission of an application meeting all the requirements of this section and a determination by the approving authority that an individual has met all applicable requirements to perform lead-based paint activities, the approving authority shall certify the applicant in one or more of the following disciplines:

(i) Target housing and public buildings - inspector technician, inspector/risk assessor, supervisor, planner/project designer, or lead abatement worker.

(ii) Commercial buildings and superstructures - supervisor or lead worker.

(2) Certified individuals conducting lead-based paint activities shall comply with the standards for performing lead-based paint activities in § 745.228.

(3) It shall be considered a violation of TSCA, as well as any other applicable State or local law or regulation, for an individual to conduct any of the lead-based paint activities described in § 745.228 of this proposal unless that individual has received the appropriate certification pursuant to the requirements specified in paragraphs (b) and (c) of this section.

(b) *Inspector technician, inspector/risk assessor or supervisor.* (1) To become certified as an inspector technician, inspector/risk assessor or supervisor, an individual shall:

(i) Successfully complete and receive a course completion certificate from an accredited training program for the appropriate discipline.

(ii) Meet or exceed the following additional experience and/or education requirements:

(A) Inspector technicians in target housing and public buildings:

(*1*) No additional experience and/or education requirements.

(*2*) [Reserved]

(B) Inspector/risk assessors in target housing and public buildings:

(*1*) One year experience in a related field (e.g., lead, asbestos, or environmental remediation work), or 25 inspections over at least a 3–month period as a certified lead inspector technician, and one of the following:

(*i*) Bachelor's degree and 1–year experience in a related field.

(*ii*) Certification as an industrial hygienist, an engineer, a registered architect, or an environmentally related scientific field, such as an environmental scientist.

(*iii*) A high school diploma (or equivalent), plus at least 2 years of experience in a related field.

(*2*) [Reserved]

(C) Supervisor in target housing and public buildings:

(*1*) One-year experience as a lead abatement worker.

(*2*) At least 2 years experience in a related field or in the building trades.

(D) Supervisor in commercial buildings and superstructures:

(*1*) At least 2 years industrial painting field experience.

(*2*) At least 90 days field supervisory or management experience in hazardous

paint removal within the previous 24 months.

(3) Work experience that demonstrates knowledge of current, relevant safety practices that have been accepted by the EPA for deleading operations.

(4) Work experience that demonstrates knowledge of current waste handling procedures for wastes derived from deleading operations.

(5) Work experience that demonstrates knowledge of environmental monitoring during deleading operations.

(iii) Pass the certification examination offered by the approving authority. The certification examination must be administered in such a way that the validity and security of the certification examination are maintained.

(2) The following documents shall be recognized by the approving authority as proof of meeting the requirements listed in this paragraph:

(i) Official academic transcripts as proof of meeting the educational requirements.

(ii) Resumes, letters of reference, certification in another state, documentation of work experience, or copies of inspection reports as proof of meeting the work experience requirements.

(iii) Certificates from lead-specific or other related training courses as proof of meeting the training requirements.

(iv) A signed, certification by the applicant that he/she meets the qualifications described in this paragraph.

(3) In order to take the certification examination for a particular discipline, an individual shall submit the following: a course completion certificate for that discipline from an accredited training program; the required documentation of education and/or experience prerequisites as described in paragraph (b)(2) of this section; and photographic proof of identity to the appropriate official of the certification examination administering body.

(4) The course completion certificate shall serve as interim certification for an individual who seeks to apply for certification until the next available opportunity to take the certification examination. Interim certification shall expire after 6 months. The approving authority shall offer separate certification examinations for the inspector technician for target housing and public buildings, inspector/risk assessor for target housing and public buildings, supervisor for target housing and public buildings, and the supervisor for commercial buildings and superstructures discipline.

(5) After passing the certification exam and meeting the appropriate training, education and/or experience prerequisites, an individual shall be issued a certificate by the approving authority. Certification shall be valid for 3 years.

(6) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her course completion certificate, the individual must retake the appropriate course from an accredited training program before reapplying for certification from the approving authority.

(c) *Worker and planner/project designer.* (1) An individual wishing to become certified as a worker in target housing and public buildings or commercial buildings and superstructures or as a planner/project designer in target housing and public buildings shall successfully complete a training course for the appropriate discipline offered by an accredited training program.

(2) Workers and planner/project designers shall be certified on an interim basis following course completion until they apply for and receive their certification from the approving authority. To receive certification from the approving authority, individuals shall submit a valid copy of their course completion certificate within 30 days of completing the course. The course completion certificate shall serve as interim certification until certification from the approving authority is received, but shall be valid for no more than 6 months from the date of course completion.

(3) Upon receipt of the valid course completion certificate, the approving authority shall issue a certification to each worker or planner/project designer. This certification shall be valid for 3 years. To maintain certification, an individual must be re-certified as described in paragraph (e) of this section by the approving authority before the certification expires.

(d) *Certification based on prior training.* (1) Any individual who received lead-based paint activities training between October 1, 1990, and [the effective date of this section] shall be eligible for certification by the approving authority under the following alternative procedures:

(i) Applicants for the disciplines of inspector technician (target housing and public buildings), inspector/risk assessor (target housing and public buildings), and supervisor (target housing and public buildings, or commercial buildings and steel structures) must:

(A) Show proof and date of the successful completion of training or on the job training equivalent to that specified in § 745.225 for a lead inspector, risk assessor, or supervisor.

(B) Demonstrate that the applicant meets the education and/or experience requirements in paragraph (b)(1)(ii) of this section.

(C) Successfully complete an accredited refresher training course for the appropriate discipline.

(D) Pass a certification exam for that discipline administered by the approving authority.

(ii) Applicants for the disciplines of worker (target housing and public buildings, or commercial buildings and superstructures) and planner/project designer (target housing and public buildings) must:

(A) Show proof and date of the successful completion of worker training equivalent to that specified in § 745.225.

(B) Successfully complete an accredited refresher training course.

(2) Individuals have until [6 months after the effective date of § 745.225] to apply for certification under the above procedures. After that date, all individuals wishing to obtain certification must do so through the procedures described in paragraph (c) of this section.

(e) *Re-certification.* (1) To maintain certification, all certified individuals, must be re-certified by the approving authority every 3 years.

(2) To become re-certified an individual shall submit a valid copy of the refresher course completion certificate to the approving authority.

(f) *Certification of firms.* (1) All firms engaged in or offering to perform lead-based paint activities must be certified by the appropriate approving authority.

(2) A firm seeking certification shall submit to the approving authority a letter certifying that the firm will only employ certified employees to conduct lead-based paint activities, and that the firm will follow the standards for conducting lead-based paint activities in § 745.228.

(3) From the date of receiving the certification application, the approving authority shall have 90 days to approve or disapprove the firm's request for certification. In the case of approval, a certificate shall be sent by the 90th day. In the case of disapproval, a letter describing the reason for disapproval shall be sent by the 90th day.

(4) The firm shall maintain all records pursuant to the requirements in § 745.228.

(g) *Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint activities.* (1) The approving authority may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Performed work requiring certification at a job site without having copies of initial and currently valid, original certificates available at the job site for inspection.

(ii) Permitted the duplication or use of the individual's own certificate by another.

(iii) Performed work for which appropriate certification has not been received from the approving authority.

(iv) Been subject to a final order imposing a civil penalty or a criminal conviction for engaging in a prohibited act under section 15 or 409 of TSCA.

(2) In addition to the situations listed in paragraph (g)(1) of this section, the approving authority may suspend, revoke, or modify the certification of individuals who have failed to comply with Federal, State, or local lead-based paint statutes or regulations. In addition to an administrative or judicial finding of violation, for purposes of this section, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(3) Any individual who performs any of the following acts shall be deemed to have committed a violation of TSCA, as well as any other applicable Federal, State, or local law or regulation:

(i) Obtained certification through fraudulent representation of training or exam documents.

(ii) Obtained training documentation through fraudulent means.

(iii) Gained admission to and completed education through fraudulent representation of initial or previous education documentation.

(iv) Obtained certification through fraudulent representation of certification requirements such as education, training, professional registration, or experience.

(v) Obtained training from a training program that is not accredited to offer training for the particular discipline from the approving authority.

(h) *Suspension, revocation and modification of certifications of firms engaged in lead-based paint activities.* (1) The approving authority may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified.

(ii) Failed to maintain required records.

(iii) Performed work for which appropriate certification has not been received from the approving authority; or

(iv) Failed to comply with the standards established in § 745.228.

(2) In addition to the situations listed in paragraph (h)(1) of this section, the approving authority may suspend, revoke, or modify the certification of firms that have failed to comply with Federal, State, or local lead-based paint statutes or regulations. In addition to an administrative or judicial finding of violation, for purposes of this section, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(3) Any firm that performs any of the following acts shall be deemed to have committed a violation of TSCA, as well as any other applicable Federal, State, or local law or regulation:

(i) Obtained certification through fraudulent representation.

(ii) Failed to obtain a certificate from the approving authority and performed work requiring certification at a job site.

(4) In addition, the approving authority may suspend, revoke, or modify the certification of firms who have been subject to a final order imposing a civil penalty or a criminal conviction for engaging in a prohibited act under section 15 or 409 of TSCA. It shall be a prohibited act under section 15 or 409 of TSCA, as well as any other applicable provision of law, for a firm that fraudulently obtains certification, to engage in any lead-based paint activities requiring certification.

(i) *Procedures for suspension, revocation, or modification of the certification of individuals or firms.* (1) If the approving authority decides to suspend, revoke, or modify the certification of any individual or firm, it shall notify the affected entity in writing of the following:

(i) The grounds upon which the suspension, revocation, or modification is based.

(ii) The commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification or to receive certification in the future.

(iv) Any additional conditions which the approving authority may impose.

(v) The opportunity and method for requesting a hearing prior to final approving authority action to suspend, revoke, or modify certification.

(2) If a hearing is requested by the certified individual or firm, the approving authority shall:

(i) Prior to the hearing, notify the affected entity of those assertions of law and fact upon which the action to suspend, revoke, or modify is based.

(ii) Provide the affected entity an opportunity to offer written statements in response to those assertion of law and fact, and any other explanations, comments, and arguments it deems relevant to the proposed action.

(iii) Provide the affected entity such other procedural opportunities as the approving authority may deem appropriate to ensure a fair and impartial hearing.

(iv) Appoint an official of the approving authority as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific case.

(3) The Presiding Officer appointed pursuant to paragraph (i)(2) of this section shall:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted pursuant to paragraph (i)(2) of this section.

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final approving authority action subject to judicial review.

(4) If the approving authority determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it shall:

(i) Notify the affected entity of its intent to immediately suspend certification for the reasons listed in paragraph (h)(1) of this section. If a suspension, revocation, or modification notice has not previously been issued, it shall be issued at the same time the immediate suspension notice is issued.

(ii) Notify the affected entity in writing of the grounds upon which the immediate suspension is based and why it is necessary to suspend the entity's accreditation before an opportunity for a hearing to suspend, revoke, or modify the individual's or firm's certification.

(iii) Notify the affected entity of the commencement date and duration of the immediate suspension.

(iv) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by the approving authority under this section, and any documents filed by a certified individual or firm in a hearing under this section, shall be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

(j) *Effective date.* (1) Training providers shall not provide, or claim to provide training for certification without accreditation from the Agency pursuant to § 745.225 after [Insert date 2 years and 180 days after publication of the final rule].

(2) No person shall engage in lead-based paint activities without certification from the Agency, pursuant to § 745.226 after [Insert date 3 years after publication of the final rule].

§ 745.228 Standards for conducting lead-based paint activities.

(a) *Inspection in target housing.* An inspection is a surface-by-surface investigation for the presence of lead-based paint conducted by a certified inspector technician or inspector/risk assessor according to the procedures in this paragraph.

(1) An inspection shall be conducted only by persons certified by the appropriate approving authority as an inspector technician or inspector/risk assessor.

(2) When conducting an inspection, the following locations shall be tested for the presence of lead-based paint:

(i) All component surfaces with visible distinct painting histories in every room, of every residential dwelling chosen for inspection, as well as all exterior components with distinct painting histories of every residential dwelling chosen for testing, except those components that are known to the inspector technician or inspector risk assessor to have been replaced after 1980.

(ii) All components with distinct visible painting histories in every common area, except those components that are known to the inspector technician or inspector risk assessor to have been replaced after 1980.

(3) Testing for the presence of lead-based paint shall be conducted by documented methodologies which incorporate adequate quality control procedures.

(4) If testing of paint chip samples is being conducted utilizing laboratory analysis:

(i) Paint chips should be collected according to the procedures found in the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing unless EPA issues regulations on this subject pursuant to section 402 of TSCA.

(ii) All samples shall be sent for analysis to a laboratory recognized by EPA as being capable of performing these activities.

(5) If using X-Ray Fluorescence Spectroscopy (XRF) to test for the presence of lead-based paint, XRF should be used according to the procedures found in the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing unless EPA issue regulations on this subject pursuant to section 402.

(6) The following information shall be recorded in a written inspection report by an inspector technician or inspector/risk assessor when conducting an inspection:

(i) Date of inspection.

(ii) Address of buildings and units.

(iii) Date of construction of buildings and units.

(iv) Unit numbers (if applicable).

(v) Name, address, and telephone number of the owner of buildings and units.

(vi) Name and signature of certified inspector technician and inspector/risk assessor conducting testing, including certification or license numbers.

(vii) Name, address, and telephone number of the certified firm employing each inspector technician or inspector/risk assessor.

(viii) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples.

(ix) Each testing device and/or sampling procedure employed, and if used, the serial number of any XRF device.

(x) Precise locations of all components and surfaces on components tested/sampled.

(xi) All data collected using on-site testing devices.

(xii) A list of all tested surfaces (components) found, either through on-site testing or laboratory analysis, to contain lead-based paint, as defined in § 745.3, and those surfaces that did not contain lead-based paint.

(xiii) Any recommendation by an inspector technician or inspector/risk assessor regarding the need for additional testing or a risk assessment.

(7)(i) Reports and plans required under paragraph (a)(6) of this section shall be maintained by the owner of the residence or building, and the certified firm that conducted the inspection for no less than 3 years.

(ii) This information is subject to the disclosure requirements developed under section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 in subpart E, "Residential Property Renovation."

(b) *Risk assessment in target housing.* A risk assessment is an on-site investigation conducted according to the procedures in this paragraph by a certified inspector/risk assessor to determine the existence, nature, severity, and location of lead-based paint hazards and the provision to the property owner/occupant of a report explaining the results of the investigation and providing options for reducing lead-based paint hazards with a rationale for those options.

(1) Any risk assessment, or other lead hazard assessment activity shall be conducted only by persons certified by the appropriate approving authority as an inspector/risk assessor.

(2) Background information regarding the physical characteristics of the unit and residential use patterns shall be collected, and shall include the following information:

(i) A schematic site plan showing each room within the/every unit, its use and the number of children under age 6 currently residing in the unit.

(ii) The age of the structure and any additions thereto.

(iii) A copy of any previous test results or inspections regarding lead-based paint or other assessments for lead-related hazards.

(iv) A description of any lead-related health problems for either children or adults in the residence, provided such information is made available to the inspector/risk assessor by the residents.

(v) Other available information that the risk assessor determines is necessary to characterize occupant use patterns that may generate or contribute to lead-based paint hazards.

(3) A visual inspection to determine the condition of all painted surfaces shall be completed by the inspector/risk assessor.

(4) Dust samples shall be collected within each selected unit according to the following procedures by an inspector/technician or the inspector/risk assessor:

(i) Parts of the living area where children are most likely to come into

contact with dust as determined by the risk assessor shall be sampled.

(ii) The samples shall be sent for analysis to a laboratory recognized by EPA as being capable of performing these activities.

(5) Where applicable, dust samples shall be collected by an inspector/technician or inspector/risk assessor in the following common areas:

(i) In buildings three floors or less, collect samples from common areas adjacent to the sampled unit. Additional samples shall be collected in the following common areas:

(A) Entry area of building.

(B) First level landing above the ground floor.

(ii) In buildings containing four floors or more, collect samples from floor and window sills of common areas (if present).

(iii) The samples shall be sent for analysis to a laboratory recognized by EPA as being capable of performing these activities.

(6) Any paint found to be deteriorated, or any other area that the inspector/risk assessor, in their professional opinion, shall be tested by an inspector/technician or the inspector/risk assessor according to the procedures found in paragraph (a)(4) of this section and, if applicable, paragraph (a)(5) or (a)(6) of this section in order to determine lead concentrations.

(7) Randomly selected soil samples shall be collected by an inspector/technician or inspector/risk assessor and analyzed in order to adequately characterize the lead concentrations in the following areas:

(i) Exterior play areas.

(ii) Areas containing bare soil.

(iii) Dripline/foundation areas.

(iv) The samples shall be sent for analysis to a laboratory recognized by EPA as being capable of performing these activities.

(8) The following information shall be recorded in a risk assessment report by a certified inspector/risk assessor when conducting a risk assessment for lead-based paint hazards in target housing:

(i) Date of assessment.

(ii) Address of residences and buildings.

(iii) Date of construction of residences and buildings.

(iv) Unit numbers (if applicable).

(v) Name, address, and telephone number of the owner of residences and buildings.

(vi) Name of each occupant of the residences and buildings at the time of assessment (if applicable).

(vii) Name and signature of certified inspector/risk assessor conducting the assessment, including their certification or license number.

(viii) Name, address, and telephone number of the certified firm employing each inspector/risk assessor.

(ix) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples.

(x) Any background information collected.

(xi) Results of the visual inspection.

(xii) Testing method and sampling procedure for paint analysis employed.

(xiii) Precise locations of all painted surfaces (components) tested for the presence of lead-based paint.

(xiv) All data collected from on-site testing.

(xv) All results of laboratory analysis on collected paint, soil, and dust samples.

(xvi) Any other sampling results.

(xvii) An evaluation, to the extent that they are utilized as part of the hazard determination, of the adequacy of any previous inspections or analyses of the presence of lead-based paint, or other assessments of lead related hazards.

(xviii) A detailed description of recommended control strategies for reducing lead-based paint hazards and justification for the strategy selected, the locations where the recommended actions should take place, and a suggested prioritization for taking each action, based on the immediacy of the hazard.

(9) Reports and plans required under paragraphs (b)(2) and (b)(8) of this section shall be maintained by the owner of the residence or building, and the certified individual or firm that conducted the risk assessment for no less than 3 years. This information is also subject to the disclosure requirements under section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 in subpart E of this part, "Residential Property Renovation."

(c) *Abatement in target housing.* (1) Abatement means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with the standards established by the Administrator in this section. Such term includes:

(i) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead- contaminated soil.

(ii) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(2) Abatement shall be presumed in the following circumstances:

(i) Projects for which there is a written contract stating that an individual or firm will be conducting activities in or to a dwelling unit that will permanently eliminate lead-based paint hazards.

(ii) Projects involving the permanent elimination of lead-based paint or lead-contaminated soil and conducted by firms or individuals certified in accordance with this part.

(iii) Projects involving the permanent elimination of lead-based paint or lead-contaminated soil and conducted by firms or individuals who, through their company name, promotional literature, or otherwise, advertise or hold themselves out to be lead abatement professionals.

(3) An abatement shall be conducted only by an individual certified by the appropriate approving authority as a worker or supervisor.

(4) A supervisor, certified by the appropriate approving authority, shall be assigned to each abatement project and available by phone and able to be present physically at the worksite within 2 hours of when abatement activities are being conducted.

(5) The certified abatement project supervisor, and the certified firm employing that supervisor are responsible for ensuring completion of all abatement activities conducted in target housing according to the standards of this section and all other Federal, State and local regulations.

(6) Notification of the commencement of lead-based paint abatement activities must be presented, for their information, to the approving authority, according to the procedures established by the approving authority, prior to the commencement of abatement activities.

(7) A written pre-abatement plan shall be developed for lead abatement firms by a certified planner project designer (or by a supervisor for projects with less than 10 units to be abated), and shall contain the following elements:

(i) Measures taken to ensure worker protection which are consistent with all Federal, State, and local regulations; hazard recognition and control procedures; and information and training to be provided to abatement workers.

(ii) Measures taken to ensure compliance with all Federal, State, and local environmental regulations.

(iii) An occupant protection program, unique to each unit and developed prior to the abatement, that describes the measures that will be taken during the abatement to protect the building occupants, the method of verification

that will be utilized to document this protection, and contains the following:

(A) In plans which require the relocation of occupants, post-abatement dust clearance levels must be met as described in paragraph (c)(9) of this section, before re-occupancy.

(B) Duration of abatement activities.

(C) Access to facilities and exits.

(D) Total area involved.

(E) Specifications for the use of containment.

(8) If any exterior abatement of lead-based paint is planned, pre-abatement composite soil samples, consisting of at least four sub-samples shall be taken next to the foundation or from the dripline below any exterior surface to be abated, unless this information is available from a current risk assessment.

(i) The samples shall be sent for analysis to a laboratory recognized by EPA as being capable of performing these activities.

(ii) [Reserved]

(9) The following post-abatement clearance procedures for units that have been abated shall be performed by a certified inspector/risk assessor:

(i) Following an abatement, a visual inspection shall be performed by the inspector technician or inspector/risk assessor to determine if there are any deteriorated surfaces or visible amounts of dust. If deteriorated surfaces or visible amounts of dust are present these conditions must be corrected and recleaned prior to the continuation of the clearance procedures.

(ii) Surface dust samples shall be taken no sooner than 24 hours after completion of final post abatement clean-up activities.

(iii) All dust samples shall be sent for analysis to a laboratory recognized by EPA as being capable of performing these activities.

(iv) The following locations shall be sampled for lead containing dust by an certified inspector technician or inspector/risk assessor:

(A) After removing lead-based paint from components throughout a unit, three dust samples shall be taken from each area in every unit abated. One sample shall be taken from one window sill, one window well, and one floor of each area, if available.

(B) After removing lead-based paint from components in a portion of the unit, procedures in paragraph (c)(9)(iv)(A) of this section shall be followed and one sample from outside the containment area (within 10 feet) shall be taken.

(C) Following a complete replacement or encapsulation of surfaces coated with lead-based paint, samples shall be taken from each area in every unit abated. One sample each shall be collected from window wells, window sills, and floors.

(D) Following a partial replacement or encapsulation of surfaces coated with lead-based paint, the procedure stated in paragraph (c)(9)(iv)(C) of this section shall be followed and one sample from outside the work area (within 10 feet) shall be taken.

(E) Following an exterior abatement, at least one sample shall be taken from an adjacent horizontal surface in the outdoor living area, including but not limited to, a patio, deck, porch, or stoop.

(v) In each area within an individual unit, the inspector/risk assessor shall compare the residual lead dust level (as determined by the laboratory analysis) from each dust sample with the clearance levels for lead in dust on floors, window sills, window wells, and exterior surfaces, as established in the HUD Guidelines for the Evaluation and Controls of Lead-Based Paint Hazards in Housing, unless superseded by any clearance levels that the Agency may establish pursuant to section 403 of TSCA. If any of the area's residual dust levels exceed these clearance levels, the area shall be cleaned again and retested until the clearance levels are met. If the dust levels continue to exceed the clearance levels, alternate hazard control strategies should be considered for use. Until all applicable clearance levels for lead in dust are met, the area shall not be cleared for re-occupancy.

(vi) Once all residual lead levels for an area meet or fall below the clearance levels for lead in dust, and there is no deteriorated paint or visible dust present, the area shall be cleared for re-occupancy by the certified inspector/risk assessor.

(10) The following procedures for determining whether soil clearance lead levels have been met shall be performed by a certified inspector/technician or inspector/risk assessor:

(i) Composite soil samples consisting of at least four subsamples shall be taken after all exterior abatement work from the dripline or next to the foundation below any exterior surface abated.

(ii) Samples shall be sent for analysis to a laboratory recognized by EPA as being capable of performing these activities.

(iii) A statistical analysis, such as, but not limited to, a paired student T-test shall be used to determine if the post-abatement soil lead level had increased at a statistically significant level (significant at the 95 percent confidence limit) from the pre-abatement soil lead level following exterior abatement activities.

(iv) If soil lead levels do not show a statistically significant increase in lead concentrations based on a statistical analysis at the 95 percent confidence limit after abatement, no remediation is required.

(v) If the soil lead levels do show a statistically significant increase, above any applicable Federal or State standard for lead in residential soil, based on the statistical analysis at the 95 percent confidence limit, the measured level of lead in the soil shall be remediated back to the pre-abatement level or abatement of the soil shall be conducted according to the standards in paragraph (j) of this section.

(11) All waste from abatement projects shall be disposed in accordance with the requirements of the Resource Conservation and Recovery Act and any other applicable Federal, State and local laws and regulations.

(12) The following information shall be recorded in a written report by the certified supervisor when conducting abatement for lead-based paint hazards in target housing:

(i) Start and completion dates of abatement.

(ii) The name and address of each certified firm conducting the abatements, and the name of each supervisor assigned to the abatement project.

(iii) The name and address and signature of each certified inspector/risk assessor or inspector technician conducting clearance sampling and the date of clearance testing.

(iv) The results of clearance testing, the name of each recognized laboratory that conducted the analyses, and the name and signature of the person conducting the analysis.

(v) A detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, and reason for selecting particular abatement methods for each component.

(vi) Information on the storage, transport and disposal of any hazardous waste generated during the abatement.

(13) The certified firm conducting an abatement shall notify the approving authority prior to beginning any abatement project according to notification procedures developed by the approving authority.

(14) Reports required under paragraphs (c)(7) and (c)(12) of this section shall be maintained by the building owner and certified firm conducting the abatement activity for no less than 3 years and are subject to the disclosure requirements mandated under section 1018 of the Residential

Lead-Based Paint Hazard Reduction Act of 1992 in subpart E of this part, "Residential Property Renovation."

(d) *Identification of lead-based paint in public buildings.* (1) The procedures, requirements and standards in paragraphs (a)(1) through (a)(7)(i) of this section shall be followed when identifying lead-based paint and materials containing lead-based paint in public buildings.

(2) All information collected from the identification of lead-based paint in public buildings as described in paragraph (d)(1) of this section shall be maintained by the owner of the building and certified firm responsible for the inspection for not less than 3 years.

(e) *Risk assessment for public buildings.* (1) The standards in paragraphs (b)(1) through (b)(3) and (b)(4)(ii) as well as (b)(6) through (b)(9) (if applicable) of this section shall be followed when conducting a risk assessment in public buildings.

(2) All information collected from the risk assessment in public buildings as described in paragraph (e)(1) of this section shall be maintained by the owner of the building and certified firm responsible for the risk assessment for not less than 3 years.

(f) *Abatement in public buildings.* (1) The standards in paragraphs (c)(1) through (c)(9)(iv)(D) and (c)(11) through (c)(16) of this section shall be followed when abating a public building.

(2) Reports required under paragraph (e)(1) of this section shall be maintained by the building owner and certified firm conducting the abatement activity for a period of not less than 3 years.

(g) *Demolition in public and commercial buildings and superstructures.* The following standards shall be followed when conducting demolition in public and commercial buildings and steel structures:

(1) A certified supervisor shall, through a review of available documents, obtain any relevant historical information on use of lead-based paint on the building.

(2) Whenever deleading is conducted as part of a demolition, such as welding, burning, or torch cutting of lead-based paint, the standards and procedures prescribed in paragraphs (i)(1) through (i)(7) of this section shall be followed.

(h) *Standards for the identification of lead-based paint in commercial buildings and superstructures.* The following standards shall be followed when conducting lead-based paint identification in commercial buildings and superstructures:

(1) A certified supervisor shall, through a review of available documents, obtain any relevant historical information on use of lead-based paint on the building.

(2) If the presence of lead-based paint cannot be established as specified in paragraph (h)(1) of this section for a portion of the structure or the entire structure, a visual inspection and limited sampling shall be conducted at a rate of one sample per 1,000 square feet of surface with a distinct painting history, including any distinct finish color and maintenance painting, within the areas that the historical review was not conclusive.

(3) All samples shall be sent for analysis to a laboratory recognized by EPA as being capable of performing these activities.

(4) The following information shall be recorded in a written report by the certified supervisor when conducting lead identification activities:

(i) Date of identification activity.

(ii) Name and signature of each person making the identification.

(iii) Determinations of existence of lead-based paint based on the results of testing.

(iv) The name and address of each recognized laboratory doing paint analysis, date of analysis, results of analysis, and name and signature of the person performing the analysis.

(5) Reports required under paragraph (h)(3) of this section shall be maintained by the owner or operator of such structure or building until such time that the structure or portion of the structure that was involved in the identification is repainted.

(i) *Deleading of lead-based paint in commercial buildings and superstructures.* The following standards shall be followed when deleading or removing lead-based paint in commercial buildings or on superstructures:

(1) Deleading shall only be conducted by persons certified by the appropriate approving authority as a worker or supervisor.

(2) A supervisor, certified by the appropriate approving authority, shall be assigned to the deleading project and available at all times when deleading activities are being conducted.

(3) The supervisor, certified for deleading on superstructures and commercial buildings by the appropriate approving authority, and the certified firm are responsible for ensuring completion of all deleading activities conducted on superstructures according to the standards of this section.

(4) A written deleading plan shall be prepared by a certified supervisor and shall contain the following elements:

(i) Measures taken to ensure worker protection which are consistent with all Federal, State, and local regulations; hazard recognition and control procedures; and information and training to be provided to deleading workers.

(ii) Measures taken to ensure compliance with all Federal, State, and local environmental regulations.

(5) All waste shall be disposed of in accordance with the appropriate requirements of the Resource Conservation and Recovery Act and any applicable Federal, State, or local requirements.

(6) A report containing the following information shall be maintained by a certified firm when conducting deleading activities on superstructures:

(i) Start and completion dates of deleading.

(ii) Names and addresses, as well as signature of each supervisor of the deleading and, their certification number(s).

(iii) The name and address of each certified firm and recognized laboratory doing any analysis, date of analysis, and name and signature of each person performing the analysis.

(iv) A detailed written description of the deleading, methods used.

(v) Identification of storage and disposal sites of all hazardous waste.

(7) The standards in paragraphs (i)(1) through (i)(7) of this section shall also be followed during deleading of lead-based paint on commercial buildings, as defined by § 745.223.

(8) Reports required under paragraph (i)(7) of this section shall be maintained by the owner or oversight agency of such structure until that structure or portion of that structure is repainted.

(j) *Soil abatement procedures.* The following standards shall be followed when conducting the abatement of lead-contaminated soil:

(1) Abatement shall only be conducted by persons certified by the appropriate approving authority as a worker or supervisor.

(2) A supervisor, certified by the appropriate approving authority, shall be assigned to the abatement project and available at all times when abatement activities are being conducted.

(3) The abatement supervisor, certified by the appropriate approving authority, and the certified firm are responsible for ensuring that all soil abatement activities are conducted according to the standards of this section.

(4) Soil abatement shall be conducted in one of the following ways.

(i) If soil removal is to be conducted, the lead-contaminated soil shall be

removed to a depth determined by the inspector/risk assessor, until such time that the Agency promulgates a regulation pursuant to section 403 of TSCA defining lead-contaminated soil.

(ii) If, after removal, the soil is to be replaced, the soil shall be replaced with non-contaminated soil, to prevent any recontamination that would pose a lead hazard.

(iii) No replacement of soil.

(iv) The contaminated soil shall be permanently covered.

(5) Soil abatement shall be conducted in a way that minimizes the likelihood that significant amounts of lead contaminated soil and dust will be blown from the site or carried away by water run-off.

(6) The following information shall be recorded in a written report by a certified firm when conducting soil abatement:

(i) Start and completion dates of abatement.

(ii) Names and addresses, as well as signature of each supervisor of the abatement and, their certification numbers.

(iii) The name and address of each certified firm and recognized laboratory doing any analysis, date of analysis, and the name and signature of each person performing the analysis.

(iv) The results of clearance and/or monitoring analysis conducted by recognized laboratories.

(v) A detailed written description of the abatement, including abatement methods used, locations of abatement, and reason for selecting each abatement method.

(vi) Identification of storage and disposal sites of all hazardous waste.

(7) Notification of the commencement of soil abatement must be presented, for their information, to the approving authority, according to the procedures established by the approving authority, prior to the commencement of abatement activities.

(8) Reports required under paragraph (j)(6) of this section shall be maintained by the owner or oversight agency of the site where soil abatement occurred and the certified individual or firm which performed the abatement for not less than 3 years.

(k) *Effective date.* All lead-based paint activities shall be performed pursuant to the standards contained in § 745.228 after [Insert date 3 years after publication of the final rule].

§ 745.230 Lead-based paint activities requirements.

Lead-based paint activities, as defined in this part, shall only be conducted according to the procedures and standards contained in § 745.228 of this subpart, or according to procedures and standards adopted by States or Tribes authorized by the Administrator. No individual or firm may perform or offer to perform any lead-based activity as defined in this part, unless certified according to the procedures at § 745.226.

§ 745.235 Enforcement.

(a) Failure or refusal to comply with any requirement of § 745.225, 745.226, 745.228, or 745.230 is a violation of section 15 of TSCA (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by § 745.225, 745.226, or 745.228, is a violation of section 15 of TSCA (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by § 745.237 and section 11 of TSCA (15 U.S.C. 2610) is a violation of section 15 of TSCA (15 U.S.C. 2614).

(d) Violators are subject to civil and criminal sanctions pursuant to section 16 of TSCA (15 U.S.C. 2615) for each violation.

§ 745.237 Inspections.

EPA may conduct reasonable inspections pursuant to the provisions of section 11 of TSCA (15 U.S.C. 2610) to ensure compliance with this part.

§ 745.239 Effective dates.

Subpart E of this part shall apply in any State that does not have an authorized program under subpart Q of this part, effective [Insert date 2 years after publication of the final rule]. In such States:

(a) Training providers shall not provide, or claim to provide training for certification without accreditation from the Agency pursuant to § 745.225 after [Insert date 2 years and 180 days after publication of the final rule].

(b) No person shall engage in lead-based paint activities without certification from the Agency, pursuant to § 745.230 after [Insert date 3 years after publication of the final rule].

(c) All lead-based paint activities shall be performed pursuant to the standards contained in § 745.228 after [Insert date 3 years after publication of the final rule].

* * * * *

Subpart Q—State Programs

§ 745.320 Scope and purpose.

The procedures established in this subpart must be followed by States that seek to administer and enforce the standards, regulations, or other requirements established under section 402 or 406 or both of the Toxic Substances Control Act.

§ 745.323 Definitions.

For purposes of this subpart, the definitions in §§ 745.3 and 745.223, and the following definitions apply:

Indian governing body means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

Indian reservation means any federally-recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

§ 745.325 Authorization of State programs.

(a) *Submission of State application.* (1) Any State which seeks authorization from EPA to administer and enforce the provisions in subpart L of this part for section 402(a) of TSCA or the provisions of subpart E of this part for section 406 of TSCA, shall submit an application to the Administrator in accordance with the procedures of this paragraph (a).

(2) Before developing an application for authorization, a State must disseminate a public notice of intent to seek such authorization and provide an opportunity for public hearing.

(3) A State application shall be sent with three complete copies to the Administrator and shall include:

(i)(A) A copy of all existing or proposed State statutes and/or regulations relating to the State's lead-based paint activities program, including any State standards for conducting lead-based paint activities.

(B) Copies of any State laws and regulations relating to the following: provisions for assessing criminal and/or civil penalties, and denying, suspending, and revoking certifications and accreditation; provisions for right-of-entry at reasonable times, including a mechanism to address refusals; and provisions to require recordkeeping and reporting.

(ii)(A) The name of the State agency that is or will be responsible for administering and enforcing the State program, the names and job titles of responsible officials in that agency, and addresses and phone numbers where the officials can be contacted.

(B) In the event that more than one agency is or will be responsible for administering and enforcing the State program, the State must designate a primary agency to oversee and coordinate administration and enforcement of the State program and serve as the primary contact with EPA.

(C) In the event that more than one agency is or will be responsible for

administering and enforcing the State program, the following information must be provided: A description of the functions to be performed by each agency, and how the program will be coordinated by the primary agency to ensure consistency and effective administration of the lead-based paint training accreditation and certification program within the State.

(iii) A discussion of any special situations, problems, and needs pertaining to the application accompanied by an explanation of how the State intends to handle them.

(iv) A description of the resources that the State intends to devote to the administration and enforcement of the State programs.

(v) A written statement by the Governor or the Attorney General that the state has the legal authority necessary to adequately administer and enforce a State program under this subpart.

(vi) Provisions to encourage voluntary compliance with State and Federal regulations.

(b) *State certification.* (1) At the time of submitting an application, the State may also certify to the Administrator that the State programs meet the requirements contained in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(2) If this certification is contained in a State's application, the State programs shall be deemed to be authorized by EPA, until such time as the Administrator disapproves the program or withdraws the authorization.

(3) If the application does not contain such certification, the State program will be authorized only after the Administrator authorizes the programs in accordance with paragraph (c) of this section.

(4) This certification must take the form of a letter from the Governor to the Administrator.

(c) *EPA approval.* (1) Within 180 days of receipt of a complete State application, the Administrator shall authorize the state programs or disapprove the application. The Administrator may authorize the State programs, after the opportunity for a public hearing, only if the Administrator finds that:

(i)(A) In the case of an application to authorize the State to administer and enforce the provisions in subpart L of this part for section 402(a) of TSCA, the State program is at least as protective of human health and the environment as the Federal program under subpart L of this part; and/or

(B) In the case of an application to authorize the State to administer and enforce the provisions for section 406 of TSCA, the State program is at least as protective of human health and the environment as the Federal program under subpart L of this part; and

(ii) The State program provides adequate enforcement.

(2) EPA shall notify the State of the Administrator's decision to authorize the State programs or disapprove the State's application. Upon authorization of a State program, it shall be a violation of Federal law for any person to fail or refuse to comply with any requirements of such program.

(3) If the State applies for authorization of State programs under both subparts L and E of this part, EPA may authorized one program and disapprove the other.

(d) *Approving authority.* (1) Upon notification of authorization, the designated State agencies will be deemed the approving authorities for purposes of administering and enforcing the State program.

(2) If a State does not have a State program to administer and enforce section 402 of TSCA or section 406 or TSCA, authorized under this section and in effect by the date which is 2 years after promulgation of this regulation, the Administrator shall, by such date, establish and enforce, a Federal program in such State, under subpart L or section 406 of TSCA, as appropriate.

(e) *Modifications.* When any substantial change is made in the administration or enforcement of a State program, a responsible official in the primary agency shall submit written notification of such changes to EPA.

(f) *Oversight.* EPA may periodically evaluate the adequacy of a State's implementation and enforcement of its authorized programs.

(g) *Reports.* The primary agency in each State that has an authorized program shall submit a written report to the Regional Administrator for the Region in which the State is located at least once every 12 months which includes the following information:

(1) A summary of the State's implementation and enforcement activities during the last reporting period, including a list of all enforcement actions taken.

(2) Any changes in the content, administration or enforcement of the State program implemented during the last reporting period.

(3) Other reports as may be required by EPA to carry out effective oversight of a State program.

(h) *Withdrawal of authorization.* (1) If EPA concludes that a State is not administering and enforcing an authorized program in compliance with the standards, regulations, and other requirements of Title IV of TSCA and this part, the Administrator shall notify the primary agency in the State in writing and indicate EPA's intent to withdraw authorization of the State program.

(2) The notice will:

(i) Identify the program aspects that EPA believes are inadequate and provide a factual basis for such findings.

(ii) Include copies of relevant documents.

(iii) Provide an opportunity for the State to respond either in writing or at a meeting with appropriate EPA officials.

(3) EPA may request that an informal conference be held between appropriate State and EPA officials.

(4) Prior to issuance of a withdrawal, a State may request that EPA hold a public hearing. At this hearing, EPA, the State, and or the public may present facts bearing on whether the State's authorization should be withdrawn.

(5) If EPA finds, on the basis of information submitted by the State or at the conference that deficiencies did not exist or were corrected by the State, EPA may withdraw its notice of intent to rescind authorization.

(6) Where EPA finds that deficiencies in the State program exist, a plan to correct the deficiencies shall be jointly prepared by the State and EPA. The plan shall describe the deficiencies found in the State program, specify the steps the State has taken or will take to remedy the deficiencies, and establish a schedule, no longer than 180 days, for each remedial action to be initiated.

(7) If no hearing is requested within 60 days of issuance of the Notice of Intent to Rescind, and an agreement is not reached within 180 days after the Agency determines that a State is not in compliance with the Federal program, the Agency shall issue an order withdrawing the State's authorization.

§ 745.327 Authorization of Indian Tribal Programs.

(a) On Indian Reservations, the appropriate Indian Governing Body may seek to administer and enforce the provisions in subpart L of this part for section 402(a) of TSCA or the provisions of subpart E of this part for section 406 of TSCA, in lieu of the Federal program.

(b) If the Indian Governing Body seeks to develop, administer, and enforce these provisions, it shall follow the procedures in § 745.325 to receive authorization from EPA to do so.

(c) Nothing in this section is intended either to confer or deny jurisdiction to the States over Indian Reservations not already conferred or denied under other laws or treaties.

§ 745.330 Grants.

The Administrator or his designate, may make grants to States and Indian Governing Bodies under section 404(g) of TSCA to develop and carry out programs authorized pursuant to §§ 745.325 and 745.327.

§ 745.339 Effective dates.

State and Tribal programs may seek authorization of their programs pursuant to Subpart Q effective [Insert date of publication of the final rule].

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Friday
September 2, 1994

Federal Register

Part IV

Department of Agriculture

Forest Service

Department of the Interior

Fish and Wildlife Service

36 CFR Part 242
50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1995–1996 Subsistence Taking of Fish and Wildlife Regulations; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AC82

Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1995–1996 Subsistence Taking of Fish and Wildlife Regulations

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes regulations for seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 1995–1996 regulatory year. This rulemaking is necessary because subpart D regulations require annual public review. When final, this rule making will replace hunting and trapping regulations in "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1994–1995 Subsistence Taking of Fish and Wildlife Regulations," which expire on June 30, 1995.

DATES: Written public comments and proposals to change this proposed rule will be accepted through November 11, 1994. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings on this proposed rulemaking from October 3–November 4, 1994, at the following locations in Alaska: Anchorage, Barrow, Bethel, Fairbanks, Galena, Kodiak, Kotzebue, Naknek, Nome, and Sitka. Written proposals to change subpart D regulations will be compiled and distributed for additional public review during the second week of November 1994. A second 30-day public comment period will follow distribution of the compiled proposal packet. Written public comments on distributed proposals will be accepted during the second public comment period. Comments on proposals to change subpart D regulations may be presented to the Regional Councils at their meetings. The Federal Subsistence Board (Board) will deliberate and take final action on proposals received that request changes to this proposed rule at a public meeting to be held in Anchorage during April 1995.

ADDRESSES: Written comments and proposals for changes to these proposed regulations may be sent to the Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Richard S. Pospahala, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Norman R. Howse, Assistant Director Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION:

Proposed Changes From 1994–1995 Seasons and Bag Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Consequently, this proposed rule reflects regulation changes for the 1995–1996 regulatory year that are approved by the Board. Regulations contained in this proposed rule will take effect on July 1, 1995, unless elements are changed by subsequent Board action following the public review process outlined herein.

The text of the 1994–1995 subpart D final rule served as the foundation for the 1995–1996 subpart D proposed rule. Minor editorial changes to the 1994–1995 final rule have been made to clarify and enhance Federal subsistence management program regulations for the 1995–1996 regulatory year. The other proposed regulatory changes include:

- Reopening the season for mountain goats in the Frosty Bay area now that logging is completed.
- Shortening the lynx trapping season in a number of Units to protect the population in a low-cycle period.
- Revising the moose season in Unit 18 based on a Request for Reconsideration received following the publication of the 1994–1995 subpart D regulations.
- Closing the season for sheep in Units 23 and 26(A) west of Howard Pass and the Redstone and Cutler Rivers to protect a low sheep population experiencing poor lamb recruitment.

Subpart D regulations were originally established from a framework of State of Alaska fish and game regulations.

Subsistence Taking of Fish and Shellfish Regulations

This proposed rule contains no subsistence fishing or shellfish taking provisions.

On July 15, 1993, the Native American Rights Fund, on behalf of a number of individuals and organizations, submitted a petition to the Secretary of the Interior and the Secretary of Agriculture requesting that they include navigable waters within the definition of "public lands" as used in implementing Title VIII. This was a request for administrative relief. The Secretaries continue their evaluation of this petition.

On March 30, 1994, the U.S. District Court for Alaska issued a decision in the consolidated *Katie John, et al. v. the United States, et al.* litigation. The court concluded that the Secretaries are entitled to manage fish and wildlife on public lands in Alaska for the purposes of providing the subsistence priority mandated in Title VIII of ANILCA. The court further concluded that, for the purposes of Title VIII, "public lands" includes all navigable waterways in Alaska. The court then issued a stay of the decision for 60 days to allow the filing of an appeal and ordered that the stay would remain in effect, pending an appellate decision, if one or more appeals were filed. Because the Federal government has successfully petitioned the Ninth Circuit Court of Appeals for permission to appeal from the district court's decision, the stay presently remains in effect.

Because the petition for rulemaking is still under consideration by the secretaries and because of the stayed court decision relative to actual Federal jurisdiction, the Board believes that issuing regulations immediately, assuming additional authority or revising existing regulations are not warranted and, in fact, appear to be inappropriate at this time. However, any comments or proposals received will be carefully considered and retained for use when the regulations are revised the next time. Therefore, the existing fish and shellfish regulations were extended (59 FR 32923, dated June 27, 1994) until December 31, 1995, or until the Secretaries direct the revision of the subsistence fish and shellfish regulations based on a revised area of jurisdiction, or until the court directs the preparation of regulations implementing its order.

Applicability of Subparts A, B, and C

Subparts A, B, and C of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.24 and 36 CFR 100.1 to 100.24, remain effective and apply to this proposed rule for subpart D. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 100.4 apply to regulations found in this subpart. The identified sections include definitions for the following terms:

Regulatory year which "means July 1 through June 30";

Federal lands which "means lands and waters and interests therein title to which is in the United States"; and

Public land or *public lands* which "means lands situated in Alaska which are Federal lands, except—

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal Law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in Section 19(b) of the Alaska Native Claims Settlement Act."

Navigable Waters

At this time, Federal subsistence management program regulations apply to all non-navigable waters located on public lands and to navigable waters located on the public lands identified at 50 CFR 100.3(b) and 36 CFR 242.3(b) of the Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940–22964) published May 29, 1992. Nothing in these regulations is intended to enlarge or diminish authorities of the Departments to manage submerged lands, title to which is held by the United States government.

Public Review Process—Regulation Comments, Proposals, and Public Meetings

Written comments or proposed regulation changes may be submitted in writing to the address identified at the beginning of this rulemaking by November 11, 1994. Comments or proposals may also be presented at Regional Council meetings to be held from October 3–November 4, 1994 in Anchorage, Barrow, Bethel, Fairbanks, Galena, Kodiak, Kotzebue, Naknek, Nome, and Sitka.

Proposals should be specific to subpart D regulations, including changes to subsistence seasons, harvest limits, and/or methods and means. Proposals submitted to the Board should include, at minimum, the following information:

a. The name, address, and telephone number of the individual or organization submitting the proposal;

b. The section and/or paragraph of the proposed rule for which the change is being suggested;

c. A statement explaining why the change is necessary;

d. A proposed solution;

e. Suggested wording for the regulation addition or change; and

f. Any supporting information.

Proposals which fail to include the above information, or proposals which are beyond the scope of authorities in subpart D, may be rejected. PROPOSALS FOR CHANGES IN CUSTOMARY AND TRADITIONAL USE ELIGIBILITY DETERMINATIONS, CHANGES RELATING TO FISH OR SHELLFISH REGULATIONS, AND CHANGES TO THE OVERALL PROGRAM WILL *NOT* BE CONSIDERED BY THE BOARD AT THIS TIME. The public is encouraged to use standardized proposal forms to submit recommendations to the Board. Proposal forms may be obtained from the U.S. Fish and Wildlife Service at the address listed above.

Following public distribution of proposals for changes to the 1995–1996 proposed subpart D regulations, a second 30-day comment period will be provided to allow public review of those proposals that will be considered by the Board. A second series of Regional Council meetings will be held in February 1995, to assist in developing recommendations to the Board. Written comments on proposals may be submitted to the U.S. Fish and Wildlife Service before conclusion of the second comment period which is presently scheduled to end on January 13, 1995. The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, April 1995. The public may provide additional oral testimony on specific proposals before the Board at that time.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Public Lands in Alaska, 36 CFR 242.11 (1992) and 50 CFR 100.11 (1992), and for the purposes identified therein, Alaska has been divided into ten subsistence resource regions, each of which is to be represented by a Regional Council. Charters for these Regional Councils were approved and signed by former Secretary Lujan on January 19, 1993. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Councils have a substantial role in helping residents of the region reviewing this proposed rule and making comments on it. Presently, the Regional Councils are composed of no fewer than seven and no more than thirteen members who are residents of the region and are knowledgeable of local subsistence concerns. Regional Council members serve a three-year term with one-third of the terms expiring annually. An extensive recruitment effort for new Regional Council members occurs each fall. The Regional Council members represent varied geographical, cultural, and user diversity within each region. Moreover, the Council Chairs present their Council's recommendations at the Board meeting in April 1995.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A,

B, and C (57 FR 22940–22964, May 29, 1992) implements the Federal Subsistence Management Program and includes a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appears in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to the use of public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075.

Public reporting burden for this form is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0075), Washington, D.C. 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Drafting Information

These regulations were drafted by William Knauer under the guidance of Richard S. Pospahala, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Thomas H. Boyd, Alaska State Office, Bureau of Land Management; John Hiscock, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Norman Howse, USDA-Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are proposed to be amended as set forth below.

PART _____—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. In Subpart D of 36 CFR part 242 and 50 CFR part 100, § _____.25 is proposed to be revised to read:

Subpart D—Subsistence Taking of Fish and Wildlife

§ _____.25 Subsistence taking of wildlife.

(a) Definitions. The following definitions shall apply to all regulations contained in this section.

ADF&G means the Alaska Department of Fish and Game.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, or moose.

Antlered means any caribou, deer, or moose having at least one visible antler.

Antlerless means any caribou, deer, or moose not having visible antlers attached to the skull.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, or musk oxen.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Designated hunter means a Federally qualified, licensed hunter who may take all or a portion of another Federally

qualified, licensed hunter's harvest limit(s) only under situations approved by the Board.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of black bear, brown and grizzly bear, caribou, deer, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption which are: The meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (elbow), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed above does not include: Meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf or wolverine.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse and sharp-tailed grouse.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

Highway means the driveable surface of any constructed road.

Household means that group of people residing in the same residence.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Motorized vehicle means a motor-driven land, air or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance which is toxic, or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Ram means a male Dall sheep.

Registration permit means a permit which authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing, or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eights (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, pelt or fur mean any tanned or untanned external covering of an animal's body; excluding bear. The skin, hide, fur or pelt of a bear shall mean the entire external covering with claws attached.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Take or *Taking* means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions herein, or regulated under other Federal law as listed in § _____ .25(i).

Ungulate means any species of hoofed mammal, including deer, caribou, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in § _____ .25 as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Wildlife may be taken for subsistence uses by any method, except as prohibited below or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this regulation. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by these regulations is prohibited.

(1) Except for special provisions found at § _____ .25(k)(1) through (26), the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life threatening situation;

(iv) Taking wildlife from a motorized vehicle, except from a motor-driven boat if the motor has been completely shut off, and the boat's progress from the motor's power has ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine.

(B) A muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over nine inches, or conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks to physically snag, impale or otherwise take wildlife; however, hooks may be used as a trap drag;

(xii) Using a crossbow in any area restricted to hunting by bow and arrow only to take ungulates, bear, wolf or wolverine;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a 7/8 inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine; except, bait may be used to take wolves and wolverine with a trapping license, and, bait may be used to take black bears with a hunting license as authorized in Unit-specific regulations at §_____.25(k)(1) through (26). Baiting of black bears is subject to the following restrictions:

(A) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(B) A person using bait shall clearly mark the site with a sign reading "black bear bait station" that also displays the person's hunting license number and ADF&G assigned number;

(C) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and wildlife may be used for bait;

(D) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(E) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground, or developed recreational facility;

(F) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(G) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods;

(H) No person may have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bear, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3:00 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at §_____.25(b)(1):

(i) Disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that firearms may be used in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare;

(c) Possession and Transportation of Wildlife.

(1) Except as specified in §_____.25(c)(3)(ii) or (c)(4), or as otherwise provided, no person may take a species of wildlife in any Unit, or portion of a Unit, if that person's total statewide take of that species has already been obtained under Federal and State regulations in other Units, or portions of other Units.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to §_____.6(f)(3), an animal taken by an individual as part of a community harvest limit counts toward that individual's harvest limit for that species taken under Federal or State regulations for areas outside of the community harvest area.

(3) Individual harvest limits.

(i) Harvest limits authorized by §_____.25 and bag limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to §_____.6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a harvest limit for a particular species under a trapping season may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: Names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf

in accordance with § _____.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § _____.6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) No person may possess, transport, give, receive or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(10) Evidence of sex and identity.

(i) If subsistence take of Dall sheep is restricted to a ram, no person may possess or transport a harvested sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, no person may possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, § _____.25(c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, § _____.25(c)(10)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(d) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required; in all cases, any identification equipment must be returned to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls.

(1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified below, and black bears of all color phases taken in Units 1–6, 11–14, 16, and 20.

(2) No person may possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) need not be sealed unless removed from the area.

(3) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) which are not removed from the Management Area or Unit.

(i) In areas where sealing is required by Federal regulations, no person may possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the area, it must first be sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area is removed from the area, it must first be sealed by an ADF&G representative in Barrow, Fairbanks, Galena, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iv) If the skin or skull of a bear taken in Unit 5 is removed from the area, it must first be sealed by an ADF&G representative in Yakutat; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(v) If the skin or skull of a bear taken in Unit 9(B) is removed from the area, it must first be sealed by an ADF&G representative in Port Alsworth or King Salmon; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) Sealing of beaver lynx, marten, otter, wolf, and wolverine. No person may possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the state, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations.

(g) A person who takes a species listed in § _____.25(f) but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in § _____.25(f).

(h) Utilization of Wildlife.

(1) No person may use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse and ptarmigan; however, the breast meat of grouse and ptarmigan may not be used as animal food or bait;

(iv) Unclassified wildlife.

(2) A person taking wildlife for subsistence shall salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas and Units 5 and 9(B) need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) Failure to salvage edible meat of ungulates, bear, or grouse and ptarmigan is prohibited.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in § _____.25 do not apply to the

subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 927, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, non-rural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(k) Unit Regulations. Subsistence taking of unclassified wildlife, all squirrel species, and marmots is allowed in all Units, without harvest limits, for the period of July 1–June 30. Subsistence taking of wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, is prohibited unless otherwise modified by subsequent regulation. Taking of wildlife under State regulations on public lands is permitted, except as otherwise restricted at §_____.25(k)(1) through (26). Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at §_____.25(k) (1) through (26).

(1) Unit 1. Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage is closed to the taking of black bear;

(D) Unit 1(C):

(*1*) The area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(*2*) The area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier, is closed to the taking of mountain goat;

(vi) In Unit 1(C), Juneau area, the trapping of furbearers for subsistence uses is prohibited on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail.

(vii) Unit-specific regulations;

(A) Bait may be used to hunt black bear in Units 1(A), 1(B), and 1(D) between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
2 bears, no more than one may be a blue or glacier bear	Sept. 1—June 30.
BROWN BEAR:	
1 bear every four regulatory years by State registration permit only	Sept. 15—Dec. 31. Mar. 15—May 31.
DEER:	
Unit 1(A)—4 antlered deer	Aug. 1—Dec. 31.
Unit 1(B)—2 antlered deer	Aug. 1—Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15—Dec. 31	Aug. 1—Dec. 31.
GOAT:	
Unit 1(A)—Revillagigedo Island only	No open season.
Unit 1(B)—that portion north of the Bradfield Canal and the North Fork of the Bradfield River. 1 goat by State registration permit only; that portion between LeConte Bay and the North Fork of Bradfield River/Canal will require a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1—Dec. 31.
Unit 1(A) and Unit 1(B)—Remainder—2 goats by State registration permit only	Aug. 1—Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River—1 goat by State registration permit only.	Oct. 1—Nov. 30.

Harvest limits	Open season
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott River.	No open season.
Remainder of Unit 1(C)—1 goat by State registration permit only	Aug. 1—Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15—Nov. 30.
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad	No open season.
Remainder of Unit 1(D)—1 goat by State registration permit only	Aug. 1—Dec. 31.
MOOSE:	
Unit 1(A)—1 antlered bull	Sept. 15—Oct. 15
Unit 1(B)—south and east of LeConte Bay and Glacier—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by Federal registration permit only. Public lands within the Stikine River drainage are closed to the taking of moose, except in accordance with these regulations by qualified rural residents during seasons identified above.	Sept. 15—Oct. 15
Remainder of Unit 1(B)	No open season.
Unit 1(C)—excluding drainages of Berners Bay—1 antlered bull by State registration permit only	Sept. 15—Oct. 15
Unit 1(D)	No open season
COYOTE:	
2 coyotes	Sept. 1—Apr. 30.
FOX, RED (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1—Feb. 15
HARE (Snowshoe and Tundra):	
5 hares per day	Sept. 1—Apr. 30
LYNX:	
2 lynx	Dec. 1—Feb. 15.
WOLF:	
5 wolves	Aug. 1—Apr. 30.
WOLVERINE:	
1 wolverine	Nov. 10—Feb. 15
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1—May 15.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1—May 15.
TRAPPING	
BEAVER:	
Unit 1 (A), (B), and (C)—No limit	Dec. 1—May 15.
COYOTE:	
No limit	Dec. 1—Feb. 15.
FOX, RED (including Cross, Black, and Silver Phases):	
No limit	Dec. 1—Feb. 15.
LYNX:	
No limit	Dec. 1—Feb. 15.
MARTEN:	
No limit	Dec. 1—Feb. 15.
MINK AND WEASEL:	
No limit	Dec. 1—Feb. 15.
MUSKRAT:	
No limit	Dec. 1—Feb. 15.
OTTER:	
No limit	Dec. 1—Feb. 15.
WOLF:	
No limit	Nov. 10—Apr. 30.
WOLVERINE:	
No limit	Nov. 10—Apr. 30.

(2) Unit 2. Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point on Warren Island.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(ii) [Reserved].

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
DEER:	
4 antlered deer	Aug. 1–Dec. 31.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.

Harvest limits	Open season
HARE (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
LYNX:	
2 lynx	Dec. 1–Feb. 15.
WOLF:	
5 wolves	Aug. 1–Apr. 30.
WOLVERINE:	
1 wolverine	Nov. 10–Feb. 15.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
BEAVER:	
No limit	Dec. 1–May 15.
COYOTE:	
No limit	Dec. 1–Feb. 15.
FOX, RED (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
LYNX:	
No limit	Dec. 1–Feb. 15.
MARTEN:	
No limit	Dec. 1–Feb. 15.
MINK AND WEASEL:	
No limit	Dec. 1–Feb. 15.
MUSKRAT:	
No limit	Dec. 1–Feb. 15.
OTTER:	
No limit	Dec. 1–Feb. 15.
WOLF:	
No limit	Nov. 10–Apr. 30.
WOLVERINE:	
No limit	Nov. 10–Apr. 30.

(3) Unit 3.

(i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground is closed to the taking of ungulates, bear, wolves and wolverine;

(B) The Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(C) Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge, are closed to all hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
DEER:	
Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting.	Oct. 15–Oct. 31.
Remainder of Unit 3—2 antlered deer	Aug. 1–Nov. 30.
MOOSE:	
Unit 3—Mitkof and Wrangell Islands—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only.	Oct. 1–Oct. 15.
Remainder of Unit 3	No open season.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
HARE (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
LYNX:	
2 lynx	Dec. 1–Feb. 15.

Harvest limits	Open season
WOLF:	
5 wolves	Aug. 1–Apr. 30.
WOLVERINE:	
1 wolverine	Nov. 10–Feb. 15.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
BEAVER:	
Unit 3—Mitkof Island—No limit	Dec. 1–Apr. 15.
Unit 3—except Mitkof Island—No limit	Dec. 1–May 15.
COYOTE:	
No limit	Dec. 1–Feb. 15.
FOX, RED (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
LYNX:	
No limit	Dec. 1–Feb. 15.
MARTEN:	
No limit	Dec. 1–Feb. 15.
MINK AND WEASEL:	
No limit	Dec. 1–Feb. 15.
MUSKRAT:	
No limit	Dec. 1–Feb. 15.
OTTER:	
No limit	Dec. 1–Feb. 15.
WOLF:	
No limit	Nov. 10–Apr. 30.
WOLVERINE:	
No limit	Nov. 10–Apr. 30.

(4) Unit 4.

(i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands, is closed to the taking of bears;

(B) The Salt Lake Bay Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(C) Port Althorp (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(D) Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay, is closed to the use of any motorized land vehicle for brown bear hunting, or for the taking of marten, mink, or weasel.

(iii) Unit-specific regulations;

(A) Boats may not be used to take bear, wolves, or wolverine, except for persons certified as disabled.

(B) [Reserved].

Harvest limits	Open season
HUNTING	
BROWN BEAR:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136° 21′ W. long.), to Rodgers Point (57° 35′ N. lat., 135° 33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.), to the entrance of Gut Bay (56° 44′ N. lat. 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15–May 20.
Remainder of Unit 4—1 bear every four regulatory years by State registration permit only	Sept. 15–5—Dec. 31. Mar. 15–May 20.
DEER:	
6 deer; however, antlerless deer may be taken only from Sept. 15—Jan. 31	Aug. 1–Jan. 31.
GOAT:	
1 goat by State registration permit only	Aug. 1–Dec. 31
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.

Harvest limits	Open season
HARE (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
LYNX:	
2 lynx	Dec. 1–Feb. 15.
WOLF:	
5 wolves	Aug. 1–Apr. 30.
WOLVERINE:	
1 wolverine	Nov. 10–Feb. 15.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
BEAVER:	
Unit 4—that portion east of Chatham Strait—No limit	Dec. 1—May 15.
Remainder of Unit 4	No open season.
COYOTE:	
No limit	Dec. 1–Feb. 15.
FOX, RED (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
LYNX:	
No limit	Dec. 1–Feb. 15.
MARTEN:	
Unit 4—Chichagof Island	No open season.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
MINK AND WEASEL:	
Unit 4—Chichagof Island	No open season.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
MUSKRAT:	
No limit	Dec. 1–Feb. 15.
OTTER:	
No limit	Dec. 1–Feb. 15.
WOLF:	
No limit	Nov. 10–Apr. 30.
WOLVERINE:	
No limit	Nov. 10–Apr. 30.

(5) Unit 5.

(i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills;

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5;

(ii) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(C) Unit 5 is open to brown bear hunting by Federal registration permit in lieu of a State metal locking tag; no State metal locking tag is required for taking a brown bear in Unit 5, provided that the hunter has obtained a Federal registration permit prior to hunting.

(D) The taking by residents of Unit 5(A) of up to 10 moose per regulatory year in Unit 5(A), except Nunatak Bench, is allowed for ceremonial potlatches and other ceremonial uses, under the terms of a Federal registration permit. Moose may be taken from August 1 through December 31. Permits will be issued to individuals only at the request of a local organization. This 10 moose limit is not cumulative with any potlatch moose permitted by the State.

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
BROWN BEAR:	
1 bear by Federal registration permit only	Sept. 1–May 31.
DEER:	
Unit 5(A)—1 buck	Nov. 1–Nov. 30.
Unit 5(B)	No open season.
GOAT:	
1 goat by State registration permit only	Aug. 1–Dec. 31
MOOSE:	
Unit 5(A), except Nunatak Bench—1 antlered bull by State registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 15–Oct. 21, public lands will be closed to taking of moose, except by rural Alaska residents of Unit 5(A).	Oct. 15–Nov. 15.

Harvest limits	Open season
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1–Dec. 15.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
HARE (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
LYNX:	
2 lynx	Dec. 1–Feb. 15.
WOLF:	
5 wolves	Aug. 1–Apr. 30.
WOLVERINE:	
1 wolverine	Nov. 10–Feb. 15.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
BEAVER:	
No limit	Nov. 10–May 15.
COYOTE:	
No limit	Dec. 1–Feb. 15.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Dec. 1–Feb. 15.
LYNX:	
No limit	Dec. 1–Feb. 15.
MARTEN:	
No limit	Nov. 10–Feb. 15.
MINK AND WEASEL:	
No limit	Nov. 10–Feb. 15.
MUSKRAT:	
No limit	Dec. 1–Feb. 15.
OTTER:	
No limit	Nov. 10–Feb. 15.
WOLF:	
No limit	Nov. 10–Apr. 30.
WOLVERINE:	
No limit	Nov. 10–Apr. 30.

(6) Unit 6.

(i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6;

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(B) The Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights.

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
1 bear	Sept. 1–June 30.
DEER:	
4 deer; however, antlerless deer may be taken only from Nov. 1–Dec. 31	Aug. 1–Dec. 31.
GOATS:	
Unit 6(A), (B)—1 goat by State registration permit only	Aug. 20–Jan. 31.
Unit 6(C)	No open season.

Harvest limits	Open season
Unit 6(D) (subareas RG242, RG243, RG224, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only. In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG243—2 goats, RG224—2 goats, RG249—2 goats, RG266—4 goats, RG252—1 goat.	Aug. 20–Jan. 31.
Unit 6(D) (subarea RG245)—The taking of goats is prohibited on all public lands	No open season.
COYOTE:	
Unit 6(A) and (D)—2 coyotes	Sept. 1–Apr. 30.
Unit 6(B)—No limit	July 1–June 30.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit	July 1–June 30.
Remainder of Unit 6(C)—No limit	July 1–June 30.
FOX, RED (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
2 lynx	Dec. 15–Jan. 15.
WOLF:	
5 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession	Aug. 1–May 15.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
BEAVER:	
Trapping—20 beaver per season	Dec. 1–Mar. 31.
COYOTE:	
Unit 6(A), (B) and (D)—No limit	Nov. 10–Mar. 31.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit	Nov. 10–Apr. 30.
Remainder of Unit 6(C)—No limit	Nov. 10–Mar. 31.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
MARTEN:	
No limit	Nov. 10–Jan. 31.
MINK AND WEASEL:	
No limit	Nov. 10–Jan. 31.
MUSKRAT:	
No limit	Nov. 10–June 10.
OTTER:	
No limit	Nov. 10–Mar. 31.
WOLF:	
No limit	Nov. 10–Mar. 31.
WOLVERINE:	
No limit	Nov. 10–Feb. 28.

(7) Unit 7.

(i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Kenai Fjords National Park is closed to all subsistence uses;

(B) The Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, grouse, ptarmigan, hares, and squirrels may be hunted with shotguns after September 1.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15; except Resurrection Creek and its tributaries.

(B) [Reserved].

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
Unit 7—3 bears	July 1–June 30.
COYOTE:	
No limit	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.

Harvest limits	Open season
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
WOLF:	
Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves	Aug. 10–Apr. 30.
Unit 7—Remainder—5 wolves	Aug. 10—Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Mar. 31.
TRAPPING	
BEAVER:	
20 Beaver per season	Dec. 1–Mar. 31.
COYOTE:	
No limit	Nov. 10–Feb. 28.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
MARTEN:	
No limit	Nov. 10–Jan. 31.
MINK AND WEASEL:	
No limit	Nov. 10–Jan. 31.
MUSKRAT:	
No limit	Nov. 10–May 15.
OTTER:	
No limit	Nov. 10–Feb. 28.
WOLF:	
No limit	Nov. 10–Feb. 28.
WOLVERINE:	
No limit	Nov. 10–Feb. 28.

(8) Unit 8. Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) A firearm may be used to take beaver with a trapping license in Unit 8 from Nov. 10–Apr. 30.

(ii) [Reserved].

Harvest limits	Open season
HUNTING	
DEER:	
Unit 8—that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57° 52' N. lat., 152° 58' W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to the mouth at Elbow Creek, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31.	Aug. 1–Oct. 31.
Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31.	Aug. 1–Dec. 31.
Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31; no more than 1 antlerless deer may be taken from Oct. 1–Nov. 30.	Aug. 1–Dec. 31.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Mar. 31.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
BEAVER:	
30 beaver per season	Nov. 10—Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Mar. 31.
MARTEN:	
No limit	Nov. 10–Jan. 31.
MINK AND WEASEL:	
No limit	Nov. 10–Jan. 31.
MUSKRAT:	
No limit	Nov. 10–June 10.
OTTER:	
No limit	Nov. 10–Jan. 31

(9) Unit 9.

(i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Katmai National Park is closed to all subsistence uses;

(B) The use of motorized vehicles, excluding aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts, is prohibited from Aug. 1–Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, this restriction does not apply to a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek.

(C) A firearm may be used to take beaver in Unit 9(B) under a trapping license from April 1–May 31.

(D) Unit 9(B) (Nondalton residents only) is open to brown bear hunting by Federal registration permit in lieu of a resident tag; no resident tag is required for taking a brown bear in Unit 9(B), provided that the hunter has obtained a Federal registration permit prior to hunting.

(E) The taking by residents of Nondalton of up to 6 bull moose per regulatory year in Unit 9(B) is allowed for ceremonial potlatches, under the terms of a Federal registration permit. Bull moose may be taken from July 1 through June 30. Permits will be issued to individuals only at the request of a local organization. This 6 moose limit is not cumulative with that permitted for potlatches by the State.

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears.	July 1–June 30.
BROWN BEAR:	
Unit 9(B)—Rural residents of Nondalton only—1 bear by Federal registration permit only	Oct. 1–Oct. 21.
	May 10–May 25.
Unit 9(B)—1 bear every four regulatory years	Oct. 1–Oct. 21. (odd years only); May 10–May 25 (even years only).
Unit 9(E)—1 bear by Federal registration permit only	Oct. 1–Dec. 31.
	May 10–May 25.
CARIBOU:	
Unit 9(A) and (C)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9(B)—5 caribou; however no more than 2 may be bulls	Aug. 1–Apr. 15.
Unit 9(D)—	No open season.
Unit 9(E)—that portion south of Seal Cape on the Pacific side of the Alaska Peninsula divide—4 caribou; only bulls may be taken between July 1 and Aug. 9.	July 1–Apr. 30.
Remainder of Unit 9(E)—4 caribou	Aug. 10–Apr. 30.
SHEEP:	
1 ram with 7/8 curl horn	Aug. 10–Sept. 20.
MOOSE:	
Unit 9(A)—1 antlered bull	Sept. 1–Sept. 15.
Unit 9(B)—1 antlered bull	Aug. 20–Sept. 15.
	Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the north—1 antlered bull	Sept. 1–Sept. 15.
	Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 antlered bull. However, during the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents during seasons identified above.	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Remainder of Unit 9(C)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31	Sept. 1–Sept. 15.
	Dec. 1–Dec. 31.
Unit 9(E)—1 antlered bull	Sept. 1–Sept. 20.
	Dec. 1–Dec. 31.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, ARCTIC (Blue and White):	
No limit	Dec. 1–Mar. 15.
FOX, RED (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.

Harvest limits	Open season
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
2 lynx	Nov. 10–Feb. 28.
WOLF:	
5 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
BEAVER:	
Unit 9(B)—40 beaver per season; however, no more than 20 may be taken between Apr. 1–May 31	Jan. 1–May 31.
Remainder of Unit 9—40 beaver per season	Jan. 1–Mar. 31.
COYOTE:	
No limit	Nov. 10–Mar. 31.
FOX, ARCTIC (Blue and White):	
No limit	Nov. 10–Feb. 28.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
LYNX:	
No limit	Nov. 10–Feb. 28.
MARTEN:	
No limit	Nov. 10–Feb. 28.
MINK AND WEASEL:	
No limit	Nov. 10–Feb. 28.
MUSKRAT:	
No limit	Nov. 10–June 10.
OTTER:	
No limit	Nov. 10–Mar. 31.
WOLF:	
No limit	Nov. 10–Mar. 31.
WOLVERINE:	
No limit	Nov. 10–Feb. 28.

(10) Unit 10.

(i) Unit 10 consists of the Aleutian Islands, Unimak Island and the Pribilof Islands;

(ii) On Otter Island in the Pribilof Islands the taking of any wildlife species for subsistence uses is prohibited.

Harvest limits	Open season
HUNTING	
CARIBOU:	
Unit 10—Unimak Island only	No open season.
Remainder of Unit 10—No limit	July 1–June 30.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, ARCTIC (Blue and White Phase):	
No limit	July 1–June 30.
FOX, RED (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
WOLF:	
5 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, ARCTIC (Blue and White Phase):	
No limit	July 1–June 30.
FOX, RED (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
MINK AND WEASEL:	
No limit	Nov. 10–Feb. 28.
MUSKRAT:	
No limit	Nov. 10–June 10.

Harvest limits	Open season
OTTER:	
No limit	Nov. 10–Mar. 31.
WOLF:	
No limit	Nov. 10–Mar. 31.
WOLVERINE:	
No limit	Nov. 10–Feb. 28.

(11) Unit 11. Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

(ii) [Reserved].

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
CARIBOU:	No open season.
SHEEP:	
1 sheep	Aug. 10–Sept. 20.
MOOSE:	
1 antlered bull	Aug. 25–Sept. 20.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
2 lynx	Dec. 15–Jan. 15.
WOLF:	
5 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents during seasons identified above.	
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Mar. 31.
TRAPPING	
BEAVER:	
30 beaver per season	Nov. 10–Apr. 30.
COYOTE:	
No limit	Nov. 10–Mar. 31.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
LYNX:	
No limit	Dec. 1–Jan. 15.
MARTEN:	
No limit	Nov. 10–Jan. 31.
MINK AND WEASEL:	
No limit	Nov. 10–Jan. 31.
MUSKRAT:	
No limit	Nov. 10–June 10.
OTTER:	
No limit	Nov. 10–Mar. 31.
WOLF:	
No limit	Nov. 10–Mar. 31.
WOLVERINE:	
2 wolverine	Nov. 10–Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents during seasons identified above.	

(12) Unit 12. Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 12 during April and October with a steel

trap, or with a snare using cable smaller than 3/32 inch diameter, is prohibited.

(ii) [Reserved].

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
CARIBOU:	
Unit 12—that portion west of the Nabesna River within the drainages of Jack Creek, Platinum Creek, and Totschunda Creek—The taking of caribou is prohibited on public lands.	No open season.
Unit 12—that portion lying east of the Nabesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—The taking of caribou is prohibited on public lands.	No open season.
Remainder of Unit 12—1 bull	Sept. 1–Sept. 20.
1 bull caribou may be taken by a Federal registration permit during a winter season to be announced for the rural Alaska residents of Tetlin and Northway only.	Winter season to be announced by the Board.
MOOSE:	
Unit 12—that portion drained by the Tanana, Nabesna, and Chisana Rivers east of the Tetlin Reservation boundary and north of the Winter Trail from Pickerel Lake to the Canadian border—1 antlered bull.	Sept. 1–Sept. 15. Nov. 20–Nov. 30.
Unit 12—that portion lying east of the Nabesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull.	Sept. 1–Sept. 30.
Unit 12—Remainder—1 antlered bull	Sept. 1–Sept. 15.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
2 lynx	Nov. 1–Jan. 31.
WOLF:	
5 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
BEAVER:	
15 beaver per season	Nov. 1–Apr. 15.
COYOTE:	
No limit	Nov. 1–Feb. 28.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
LYNX:	
No limit	Dec. 1–Jan. 15.
MARTEN:	
No limit	Nov. 1–Feb. 28.
MINK AND WEASEL:	
No limit	Nov. 1–Feb. 28.
MUSKRAT:	
No limit	Sept. 20–June 10.
OTTER:	
No limit	Nov. 1–Apr. 15.
WOLF:	
No limit	Oct. 1–Apr. 30.
WOLVERINE:	
No limit	Nov. 1–Feb. 28.

(13) Unit 13.

(i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the

Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13;

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Subsistence uses as authorized by § _____.25(k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, the use of motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
CARIBOU:	
2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10–Sept. 20. Jan. 5–Mar. 31.
SHEEP:	
Unit 13—excluding Unit 13(D) and the Tok and Delta Management Areas—1 ram with 7/8 curl horn	Aug. 10–Sept. 20.
MOOSE:	
1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household	Aug. 25–Sept. 20.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
2 lynx	Dec. 15–Jan. 15.
WOLF:	
5 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine. Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents during seasons identified above.	Sept. 1–Jan. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Mar. 31.

Harvest limits	Open season
TRAPPING	
BEAVER:	
30 beaver per season	Oct. 10–Apr. 30.
COYOTE:	
No limit	Nov. 10–Mar. 31.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
LYNX:	
No limit	Dec. 1–Jan. 15.
MARTEN:	
No limit	Nov. 10–Jan. 31.
MINK AND WEASEL:	
No limit	Nov. 10–Jan. 31.
MUSKRAT:	
No limit	Nov. 10–June 10.
OTTER:	
No limit	Nov. 10–Mar. 31.
WOLF:	
No limit	Nov. 10–Mar. 31.
WOLVERINE:	
2 wolverine. Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents during seasons identified above.	Nov. 10–Jan. 31.

(14) Unit 14.

(i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A);

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) the Fort Richardson Management Area, consisting of the Fort Richardson Military Reservation, is restricted to the subsistence taking of ungulates, bear, wolves, or wolverine by permit only;

(B) the Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek is closed to subsistence taking of wildlife for subsistence uses.

(iii) Unit-specific regulations;

(A) In Unit 14(A), bait may be used to hunt black bear between April 15 and May 25;

(B) In Unit 14(B), bait may be used to hunt black bear between April 15 and May 31.

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
Unit 14(A) and (C)—1 bear	July 1–June 30.
BROWN BEAR:	
Unit 14(A)—1 bear every four regulatory years	Sept. 15–Oct. 10. May 1–May 25.
COYOTE:	
Unit 14(A) and (C)—2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
Unit 14—2 foxes	Nov. 1–Feb. 15.
HARE (Snowshoe and Tundra):	
Unit 14(A)—5 hares per day	July 1–June 30.
Unit 14(C)—5 hares per day	Sept. 8–Apr. 30.
LYNX:	
2 lynx	Dec. 15–Jan. 15.
WOLF:	
5 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 14(A)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Unit 14(C)—5 per day, 10 in possession	Sept. 8–Mar. 31.
PTARMIGAN (Rock, Willow, and White-tailed):	
Unit 14(A)—10 per day, 20 in possession	Aug. 10–Mar. 31.
Unit 14(C)—10 per day, 20 in possession	Sept. 8–Mar. 31.
Remainder of Unit 14—20 per day, 40 in possession	Aug. 10–Mar. 31.

Harvest limits	Open season
TRAPPING	
BEAVER:	
Unit 14(A)—30 beaver per season	Nov. 10–Apr. 30.
Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
COYOTE:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
FOX, RED (including Cross, Black and Silver Phases):	
Unit 14(A)—No limit	Nov. 10–Feb. 28.
Unit 14(C)—1 fox	Nov. 10–Feb. 28.
MARTEN:	
No limit	Nov. 10–Jan. 31.
MINK AND WEASEL:	
No limit	Nov. 10–Jan. 31.
MUSKRAT:	
No limit	Nov. 10–May 15.
OTTER:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
WOLF:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
WOLVERINE:	
No limit	Nov. 10–Feb. 28.

(15) Unit 15.

(i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150°00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150°00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15;

(ii) The Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning, is closed to the taking of wildlife, except that grouse and ptarmigan may be taken only from October 1–March 1 by bow and arrow only;

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) The Skilak Loop Wildlife Management Area is closed to subsistence trapping of furbearers;

(C) That portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten;

(D) Taking a red fox in Unit 15 by any means other than a steel trap or snare is prohibited.

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
COYOTE:	
No limit	Sept. 1–Apr. 30.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
WOLF:	
Unit 15—that portion within the Kenai National Wildlife Refuge—2 Wolves	Aug. 10–Apr. 30.
Unit 15—Remainder—5 Wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 Wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
PTARMIGAN (Rock, Willow, and White-tailed):	
Unit 15 (A) and (B)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 15 (C)—20 per day, 40 in possession	Aug. 10–Dec. 31.
Unit 15 (C)—5 per day, 10 in possession	Jan. 1–Mar. 31.

Harvest limits	Open season
TRAPPING	
BEAVER:	
20 Beaver per season	Dec. 1–Mar. 31.
COYOTE:	
No limit	Nov. 10–Feb. 28.
FOX, RED (including Cross, Black and Silver Phases):	
1 Fox	Nov. 10–Feb. 28.
MARTEN:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River and Skilak Glacier	No open season.
Remainder of Unit 15—No limit	Nov. 10–Jan. 31.
MINK AND WEASEL:	
No limit	Nov. 10–Jan. 31.
MUSKRAT:	
No limit	Nov. 10–May 15.
OTTER:	
Unit 15 (A) and (B)—No limit	Nov. 10–Jan. 31.
Unit 15 (C)—No limit	Nov. 10–Feb. 28.
WOLF:	
No limit	Nov. 10–Feb. 28.
WOLVERINE:	
Unit 15 (B) and (C)—No limit	Nov. 10–Feb. 28.

(16) Unit 16.

(i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16;

(ii) The Mount McKinley National Park, as it existed prior to December 2, 1980, is closed to subsistence uses. Subsistence uses as authorized by § _____.25(k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
CARIBOU:	
1 caribou	Aug. 10–Oct. 31.
MOOSE:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull	Sept. 1–Sept. 15.
Remainder of Unit 16(B)—1 moose; however, antlerless moose may be taken only from Sept. 25–Sept. 30 and from Dec. 1–Feb. 28 by Federal registration permit only.	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
2 lynx	Dec. 15–Jan. 15.
WOLF:	
5 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Mar. 31.
TRAPPING	
BEAVER:	
30 beaver per season	Nov. 10–Apr. 30.
COYOTE:	
No limit	Nov. 10–Mar. 31.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
MARTEN:	
No limit	Nov. 10–Jan. 31.

Harvest limits	Open season
MINK AND WEASEL:	
No limit	Nov. 10–Jan. 31.
MUSKRAT:	
No limit	Nov. 10–June 10.
OTTER:	
No limit	Nov. 10–Mar. 31.
WOLF:	
No limit	Nov. 10–Mar. 31.
WOLVERINE:	
No limit	Nov. 10–Feb. 28.

(17) Unit 17.

(i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legally permitted hunting camps, the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), is closed from Aug. 1–Nov. 1 to the use of any motorized vehicle for hunting ungulates, bear, wolves and wolverine, including transportation of hunters and parts of ungulates, bear, wolves or wolverine;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
BROWN BEAR:	
Unit 17(A) and that portion of Unit 17(B) draining into the Nuyakuk Lake and Tikchik Lake—1 bear	Sept. 1–May 31.
Remainder of Unit 17(B)—1 bear every four regulatory years	Sept. 20–Oct. 10. May 10–May 25.
Unit 17(C)—1 bear every four regulatory years	Sept. 10–Oct. 10. Apr. 10–May 25.
CARIBOU:	
Unit 17(A) and (C)—that portion of 17(A) and (C) consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—1 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk during seasons identified above.	Jan. 1–Mar. 31.
Unit 17(B) and (C)—that portion of 17(C) east of the Nushagak River—5 caribou; however, no more than 2 caribou may be bulls.	Aug. 1–Apr. 15.
SHEEP:	
1 ram with full curl horn or larger	Aug. 10–Sept. 20.
MOOSE:	
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 antlered bull.	Sept. 1–Sept. 20.
Remainder of Unit 17(B)—1 antlered bull; however, during the period Aug. 20–Aug. 31 bull moose may be taken by State registration permit only.	Aug. 20–Sept. 20. Dec. 1–Dec. 31.
Unit 17(C)—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 antlered bull; however, during the period Aug. 20–Aug. 31 bull moose may be taken by State registration permit only.	Aug. 20–Sept. 15.
Remainder of Unit 17(C)—1 antlered bull; however, during the period Aug. 20–Aug. 31 bull moose may be taken by State registration permit only.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, ARCTIC (Blue and White Phase):	
No limit	Dec. 1–Mar. 15.
FOX, RED (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
2 lynx	Nov. 10–Feb. 28.

Harvest limits	Open season
WOLF:	
5 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
BEAVER:	
Unit 17(A)—20 beaver per season	Jan. 1–Feb. 28.
Unit 17(B) and (C)—20 beaver per season	Jan. 1–Feb. 28.
COYOTE:	
No limit	Nov. 10–Mar. 31.
FOX, ARCTIC (Blue and White Phase):	
No limit	Nov. 10–Feb. 28.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
LYNX:	
No limit	Nov. 10–Feb. 28.
MARTEN:	
No limit	Nov. 10–Feb. 28.
MINK AND WEASEL:	
No limit	Nov. 10–Feb. 28.
MUSKRAT:	
No limit	Nov. 10–June 10.
OTTER:	
No limit	Nov. 10–Mar. 31.
WOLF:	
No limit	Nov. 10–Mar. 31.
WOLVERINE:	
No limit	Nov. 10–Feb. 28.

(18) Unit 18.

(i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag is closed to the use of aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) A firearm may be used to take beaver under a trapping license in Unit 18 from Apr. 1–Jun. 10.

(B) [Reserved].

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
BROWN BEAR:	
1 bear	Sept. 1–May 31.
CARIBOU:	
Unit 18—that portion south of the Yukon River—Kilbuck caribou herd; rural Alaska residents domiciled in Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaaskiak, Napakiak, Kasigiuk, Atmauthluak, Nunapitchuk, Tuntutuliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills, only. A Federal registration permit is required. The number of permits available for these hunts will be determined at a later date. The taking of caribou will be prohibited when a total Unit harvest of 130 bulls has been reached in either or both hunts administered by the Board or ADF&G.	Dec. 15–Jan. 9. Feb. 23–Mar. 15.
Remainder of Unit 18	No open season.

Harvest limits	Open season
MOOSE:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage—1 antlered bull.	Sept. 5–Sept. 25.
Unit 18—those portions in the Kanektok and Goodnews drainages	No open season.
Remainder of Unit 18—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Sept. 1–Sept. 30. Winter season to be announced.
Public lands in Unit 18 are closed to the hunting of moose, except by rural Alaska residents of Unit 18 and Upper Kalskag during seasons identified above.	
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, ARCTIC (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
2 lynx	Nov. 10–Mar. 31.
WOLF:	
5 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–May 30.
TRAPPING	
BEAVER:	
No limit	Nov. 1–June 10.
COYOTE:	
No limit	Nov. 10–Mar. 31.
FOX, ARCTIC (Blue and White Phase):	
No limit	Nov. 10–Mar. 31.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Mar. 31.
LYNX:	
No limit	Nov. 10–Mar. 31.
MARTEN:	
No limit	Nov. 10–Mar. 31.
MINK AND WEASEL:	
No limit	Nov. 10–Jan. 31.
MUSKRAT:	
No limit	Nov. 10–June 10.
OTTER:	
No limit	Nov. 10–Mar. 31.
WOLF:	
No limit	Nov. 10–Mar. 31.
WOLVERINE:	
No limit	Nov. 10–Mar. 31.

(19) Unit 19.

(i) Unit 19 consists of the Kuskokwim River drainage upstream from Lower Kalskag:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by § _____.25(k)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) The Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west

bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152° 50' W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) The Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved].

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
BROWN BEAR:	
Unit 19 (A) and (B) that portion which is downstream of and including the Aniak River drainage—1 bear	Sept. 1–May 31.
Remainder of Unit 19 (A), (B), and (D)—1 bear every four regulatory years	Sept. 10–May 25.
CARIBOU:	
Unit 19(A) north of Kuskokwim River—1 caribou	Aug. 10–Sept. 30.
	Nov. 1–Feb. 28.
Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding rural Alaska residents of Lime Village)—4 caribou.	Aug. 10–Mar. 31.
Unit 19(C)—1 caribou	Aug. 10–Oct. 10.
Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou	Aug. 10–Sept. 30.
	Nov. 1–Jan. 31.
Remainder of Unit 19(D)—1 caribou	Aug. 10–Sept. 30.
Unit 19—Rural Alaska residents domiciled in Lime Village only; no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system.	July 1–June 30.
SHEEP:	
1 ram with 7/8 curl	Aug. 10–Sept. 20.
MOOSE:	
Unit 19—Rural Alaska residents of Lime Village only—No individual harvest limit, but a village harvest quota of 40 moose (including those taken under the State Tier II system); either sex. Reporting will be by a community reporting system.	July 1–June 30.
Unit 19(A)—1 moose; however, antlerless moose may be taken only from Jan. 1–Jan. 10 and Feb. 1–Feb. 5	Sept. 5–Sept. 25.
	Jan. 1–Jan. 10.
	Feb. 1–Feb. 5.
Unit 19(B)—1 antlered bull	Sept. 1–Sept. 30.
Unit 19(C)—1 antlered bull	Sept. 1–Oct. 10.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull	Sept. 1–Sept. 30.
	Dec. 1–Feb. 28.
Remainder of Unit 19(D)—1 antlered bull	Sept. 1–Sept. 30.
	Dec. 1–Dec. 15.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
2 lynx	Nov. 1–Feb. 28.
WOLF:	
5 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
BEAVER:	
No limit	Nov. 1–Apr. 15.

Harvest limits	Open season
COYOTE:	
No limit	Nov. 1–Mar. 31.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Mar. 31.
LYNX:	
No limit	Nov. 1–Feb. 28.
MARTEN:	
No limit	Nov. 1–Feb. 28.
MINK AND WEASEL:	
No limit	Nov. 1–Feb. 28.
MUSKRAT:	
No limit	Nov. 1–June 10.
OTTER:	
No limit	Nov. 1–Apr. 15.
WOLF:	
No limit	Nov. 1–Mar. 31.
WOLVERINE:	
No limit	Nov. 1–Mar. 31.

(20) Unit 20.

(i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River:

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by § _____.25(k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) Use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as provided below. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(D) The Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway, is closed to the use of any motorized vehicle for hunting from August 5–September 20; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) The Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway

beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning, is open to moose hunting by permit only;

(F) The Fairbanks Management Area, which consists of the Goldstream subdivision 0SE ¼ SE ¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning, is open to moose hunting by bow and arrow only;

(G) The Ferry Trail Management Area, which consists of that portion of Unit 20(A) bounded on the north by the Rex Trail; on the west by the east bank of the Nenana River from its intersection with the Rex Trail south to the divide forming the north boundary of the Lignite Creek drainage; on the south by that divide easterly and southerly to the headwaters of Sanderson Creek at Usibelli Peak, then along a southwesterly line to the confluence of Healy Creek and Coal Creek, then upstream easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters; on the east by a straight line from the headwaters of Healy Creek to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, then down the east bank of the Totatlanika River to the Rex Trail is open to caribou hunting by permit only.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 20(E) during April and October with a steel trap, or with a snare using cable smaller than 3/32 inch diameter, is prohibited;

(C) The taking of up to three moose per regulatory year by the residents of Unit 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
BROWN BEAR:	
Unit 20—except Unit 20(E)—1 bear every four regulatory years	Sept. 1–May 31.
CARIBOU:	
Unit 20(E)—1 bull by Federal registration permit only; the season will close when a harvest quota for the Fortymile herd has been reached. The harvest quota will be determined by the Board after consultation with ADF&G and announced before the season opening.	Aug. 10–Sept. 30. Dec. 1–Feb. 28.
Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10–Sept. 30	Aug. 10–Sept. 30. Nov. 26–Dec. 10. Mar. 1–Mar. 15.
Unit 20(F)—south of the Yukon River	No open season.
Remainder of Unit 20(F)—1 bull	Aug. 10–Sept. 30.
MOOSE:	
Unit 20(A)—the Ferry Trail Management Area—1 bull with spike-fork or 50-inch antlers or antlers with 4 or more brow tines on one side.	Sept. 1–Sept. 20.
Remainder of Unit 20(A)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only	Sept. 1–Sept. 20. Jan. 10–Feb. 28.
Unit 20(B)—the drainage of the Middle Fork of the Chena River and that portion of the Salcha River Drainage upstream from and including Goose Creek—1 antlered bull.	Sept. 1–Sept. 20.
Remainder of Unit 20(B)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(C)—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30.
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull.	Sept. 1–Sept. 15.
Remainder of Unit 20(E)—that portion draining into the Yukon River upstream from and including the Charley River drainage to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 antlered bull.	Sept. 5–Sept. 25.
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1–Sept. 25.
Remainder of Unit 20(F)—1 antlered bull	Sept. 1–Sept. 25.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.

Harvest limits	Open season
LYNX:	
Unit 20(E)—2 lynx	Nov. 1–Jan. 31.
Remainder of Unit 20—2 lynx	Dec. 1—Jan. 31.
WOLF:	
10 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse.	Aug. 25–Mar. 31.
Unit 20—Remainder—15 per day, 30 in possession	Aug. 10–Mar. 31.
PTARMIGAN (Rock, Willow, and White-tailed):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 20—Remainder—20 per day, 40 in possession	Aug. 10—Apr. 30.
TRAPPING	
BEAVER:	
Unit 20(A), 20(B), Unit 20(C), Unit 20(E), and 20(D)—that portion draining into the north bank of the Tanana River, including the islands in the Tanana River—25 beaver.	Nov. 1–Apr. 15.
Remainder of Unit 20(D)—15 beaver	Feb. 1–Apr. 15.
Unit 20(F)—50 beaver	Nov. 1–Apr. 15.
COYOTE:	
Unit 20(E)—No limit	Nov. 1–Feb. 28.
Remainder Unit 20—No limit	Nov. 1–Mar. 31.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
LYNX:	
No limit	Dec. 1–Jan. 15.
MARTEN:	
No limit	Nov. 1–Feb. 28.
MINK AND WEASEL	
No limit	Nov. 1–Feb. 28.
MUSKRAT:	
Unit 20(E)—No limit	Sept. 20–June 10.
Remainder of Unit 20—No limit	Sept. 20–June 10.
OTTER:	
No limit	Nov. 1–Apr. 15.
WOLF:	
Unit 20(E)—No limit	Oct. 1–Apr. 30.
Remainder of Unit 20—No limit	Nov. 1–Mar. 31.
WOLVERINE:	
No limit	Nov. 1—Feb. 28.

(21) Unit 21.

(i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River upstream and including from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a

publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) A firearm may be used to take beaver with a trapping license in Unit 21(E) from Apr. 1–June 1.

(C) The taking of up to three moose per regulatory year by the residents of Unit 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

(D) The taking of up to three moose per regulatory year by the residents of Unit 21 is allowed for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
BROWN BEAR:	
1 bear every four regulatory years	Sept. 1–May 31.
CARIBOU:	
Unit 21(A), (B), (C), and (E)—1 caribou.	Aug. 10–Sept. 30.
Unit 21(D)—North of the Yukon River and east of the Koyukuk River 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10–Sept. 30. Winter season to be announced.
Unit 21(D)—Remainder (Western Arctic Caribou herd)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
MOOSE:	
Unit 21(A)—1 antlered bull	Sept. 5–Sept. 30. Nov. 1–Nov. 30.
Unit 21(B) and (C)—1 antlered bull	Sept. 5–Sept. 25
Unit 21(D)—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Feb. 1–Feb. 5; moose may not be taken within one-half mile of the Yukon River during the February season.	Sept. 5–Sept. 25. Feb. 1–Feb. 5.
Unit 21(E)—1 moose; however, only antlered bulls may be taken from Sept. 5–Sept. 25	Sept. 5–Sept. 25. Feb. 1–Feb. 10.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
2 lynx	Nov. 1–Feb. 28.
WOLF:	
5 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
BEAVER:	
Unit 21(E)—No Limit	Nov. 1–June 1.
Remainder of Unit 21—No Limit	Nov. 1–Apr. 15.
COYOTE:	
No limit	Nov. 1–Mar. 31.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
LYNX:	
No limit	Nov. 1–Feb. 28.
MARTEN:	
No limit	Nov. 1–Feb. 28.
MINK AND WEASEL:	
No limit	Nov. 1–Feb. 28.

Harvest limits	Open season
MUSKRAT:	
No limit	Nov. 1–June 10.
OTTER:	
No limit	Nov. 1–Apr. 15.
WOLF:	
No limit	Nov. 1–Mar. 31.
WOLVERINE:	
No limit	Nov. 1–Mar. 31.

(22) Unit 22.

(i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) Unit-specific regulations;

(A) A firearm may be used to take beaver with a trapping license in Unit 22 during the established seasons.

(B) Snowmachines may be used to take caribou and moose in Unit 22 during established seasons; however, shooting from a snowmachine in motion is prohibited.

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
BROWN BEAR:	
Unit 22(C)—1 bear every four regulatory years	Sept. 1–Oct. 31. May 10–May 25.
Remainder of Unit 22—1 bear every four regulatory years	Sept. 1–Oct. 31. Apr. 15–May 25.
CARIBOU:	
Unit 22 (A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30
MOOSE:	
Unit 22(A)—1 antlered bull	Aug. 1–Sept. 30. Dec. 1–Jan. 31.
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(C)—1 antlered bull	Sept. 1–Sept. 14.
Unit 22(D)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(E)—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
COYOTE:	
2 Coyotes	Sept. 1–Apr. 30.
FOX ARCTIC (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
10 foxes	Nov. 1–Apr. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
2 lynx	Nov. 1–Apr. 15.
WOLF:	
No limit	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
BEAVER:	
Unit 22 (A) and (B)—50 beaver	Nov. 1–June 10.
Unit 22 (C), (D), and (E)—50 beaver	Nov. 1–Apr. 15.
COYOTE:	
No limit	Nov. 1–Apr. 15.

Harvest limits	Open season
FOX, ARCTIC (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
LYNX:	
No limit	Nov. 1–Apr. 15.
MARTEN:	
No limit	Nov. 1–Apr. 15.
MINK AND WEASEL:	
No limit	Nov. 1–Jan. 31.
MUSKRAT:	
No limit	Nov. 1–June 10.
OTTER:	
No limit	Nov. 1–Apr. 15.
WOLF:	
No limit	Nov. 1–Apr. 15.
WOLVERINE:	
No limit	Nov. 1–Apr. 15.

(23) Unit 23.

(i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainge to Cape Lisburne;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Kugururok River, and extending easterly along the Noatak River to the mouth of Sapun Creek, is closed for the period August 20–September 20 to the use of aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species;

(B) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A) is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting; aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between public owned airports.

(iii) Unit-specific regulations;

(A) Motor-driven boats or snowmachines may be used to take caribou; however, shooting from a snowmachine in motion is prohibited.

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

(C) A firearm may be used to take beaver with a trapping license in all of Unit 23 from Nov. 1–June. 10.

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
BROWN BEAR:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear	Sept. 1–May 31.
Remainder of Unit 23—1 bear every four regulatory years	Sept. 1–Oct. 10.
	Apr. 15–May 25.
CARIBOU:	
5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
SHEEP:	
Unit 23—that portion west of Howard Pass and the Cutler and Redstone Rivers	No open season.
Remainder of Unit 23—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Remainder of Unit 23—1 sheep	Oct. 1–Apr. 30.
MOOSE:	
Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a cow accompanied by a calf.	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, anterless moose may be taken only from Nov. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1—Sept. 15.
	Oct. 1–Mar. 31.
Remainder of Unit 23—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, ARCTIC (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
10 foxes, however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.

Harvest limits	Open season
LYNX:	
2 lynx	Dec. 1–Jan. 15.
WOLF:	
5 wolves	Nov. 10–Mar. 31.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
BEAVER:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver	Nov. 1–June 10.
Remainder of Unit 23—30 beaver	Nov. 1–June 10.
COYOTE:	
No limit	Nov. 1–Apr. 15
FOX, ARCTIC (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
LYNX:	
3 lynx	Dec. 1–Jan. 15.
MARTEN:	
No limit	Nov. 1–Apr. 15.
MINK AND WEASEL:	
No limit	Nov. 1–Jan. 31.
MUSKRAT:	
No limit	Nov. 1–June 10.
OTTER:	
No. limit	Nov. 1–Apr. 15.
WOLF:	
No limit	Nov. 10–Mar. 31.
WOLVERINE:	
No limit	Nov. 1–Apr. 15

(24) Unit 24.

(i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may

not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
BROWN BEAR:	
Unit 24—that portion west of the Dalton Highway Corridor Management Area—1 bear	Sept. 1–May 31.
Remainder of Unit 24—1 bear every four regulatory years	Sept. 1—May 31.
CARIBOU:	
Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull.	Aug. 10–Sept. 30.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
SHEEP:	
Unit 24—that portion within the Gates of the Arctic National Park—3 sheep	Aug. 1–Apr. 30.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 24—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
MOOSE:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only during the periods of Sept. 21–Sept. 25, Dec. 1–Dec. 10, and Mar. 1–Mar. 10.	Sept. 5–Sept. 25. Dec. 1–Dec. 10. Mar. 1–Mar. 10.
Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park—1 moose	Aug. 1–Dec. 31.
Unit 24—all drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North Fork of the Koyukuk River, except that portion of the John River within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25. Mar. 1–Mar. 10.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25–Sept. 25.
Remainder of Unit 24—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents during seasons identified above.	Aug. 25–Sept. 25.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
2 lynx	Nov. 1–Feb. 28.
WOLF:	
5 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
BEAVER:	
No limit	Nov. 1–Apr. 15.
COYOTE:	
No limit	Nov. 1–Mar. 31.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
LYNX:	
No limit	Nov. 1–Feb. 28.
MARTEN:	
No limit	Nov. 1–Feb. 28.
MINK AND WEASEL:	
No limit	Nov. 1–Feb. 28.
MUSKRAT:	
No limit	Nov. 1–June 10.
OTTER:	
No limit	Nov. 1–Apr. 15.
WOLF:	
No limit	Nov. 1–Mar. 31.

Harvest limits	Open season
WOLVERINE:	
No limit	Nov. 1–Mar. 31.

(25) Unit 25.

(i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Arctic Village Sheep Management Area, which encompasses approximately 567,680 acres north and west of Arctic Village. The area consists of that portion of Unit 25(A) which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Cane Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary located directly south of Little Njoo Mountain; the boundary leaves the river and continues upstream along this unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into two roughly equal drainages; the boundary follows the eastern most fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 20 miles along the divide to an unnamed peak, elevation 6,460, located north of the most southerly major fork of the headwaters of Cane Creek; then the boundary continues due south 1.5 miles to the high point of a saddle, then down the headwaters tributary to Cane Creek and down the creek to the confluence of Cane Creek and the East Fork Chandalar. Sheep hunting in this area is restricted to residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved].

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
CARIBOU:	
Unit 25 (A), (B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transported from these units per regulatory year.	July 1–Apr. 30.
Unit 25(C)—that portion south and east of the Steese Highway—1 bull by Federal registration permit only; the season will close when a harvest quota for the Fortymile herd has been reached. The harvest quota will be determined by the Board after consultation with ADF&G and announced before the season opening.	Aug. 10–Sept. 30. Dec. 1–Feb. 28.
25(C)—that portion north and west of the Steese Highway—1 caribou; however, only bull caribou may be taken during the Aug. 10–Sept. 20 season. During the winter season, caribou may be taken only with a Federal registration permit.	Aug. 10–Sept. 20. Feb. 15–Mar. 15.
Unit 25 (D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull	Aug. 10–Sept. 30.
SHEEP:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area—3 sheep by Federal registration permit only; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger.	Oct. 1–Apr. 30. Aug. 10–Sept. 20.
Unit 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik during seasons identified above.	Aug. 10–Apr. 30.
Remainder of Unit 25(A)—3 sheep by Federal registration permit only	Aug. 10–Apr. 30.
MOOSE:	
Unit 25(A)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 10.

Harvest limits	Open season
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25–Sept. 30.
	Dec. 1–Dec. 10.
Remainder of Unit 25(B)—1 antlered bull	Aug. 25–Sept. 25.
	Dec. 1–Dec. 15.
Unit 25(C)—1 antlered bull	Sept. 1–Sept. 15.
Unit 25(D)(West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. Moose hunting on public land in this portion of Unit 25(D)(West) is closed at all times except for residents of Beaver, Birch Creek and Stevens Village during seasons identified above. The moose season will be closed when 30 antlered moose have been harvested in the entirety of Unit 25(D)(West).	Aug. 25–Feb. 28.
Remainder of Unit 25(D)—1 antlered moose	Aug. 25–Sept. 25.
	Dec. 1–Dec. 20.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
Unit 25(C)—2 lynx	Dec. 1–Jan. 31.
Remainder of Unit 25—2 lynx	Nov. 1–Feb. 28.
WOLF:	
Unit 25(A)—No limit	Aug. 10–Apr. 30.
Remainder of Unit 25—10 wolves	Aug. 10–Apr. 30.
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31.
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 25(C)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Remainder of Unit 25—15 per day, 30 in possession	Aug. 10–Apr. 30.
PTARMIGAN (Rock, Willow, and White-tailed):	
Unit 25(C)—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Remainder of Unit 25—20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
BEAVER:	
Unit 25(C)—25 beaver	Nov. 1–Apr. 15.
Remainder of Unit 25—50 beaver	Nov. 1–Apr. 15.
COYOTE:	
No limit	Nov. 1–Mar. 31.
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
LYNX:	
Unit 25(C)—No limit	Dec. 1–Jan. 15.
Remainder of Unit 25—No limit	Nov. 1–Feb. 28.
MARTEN:	
No limit	Nov. 1–Feb. 28.
MINK AND WEASEL:	
No limit	Nov. 1–Feb. 28.
MUSKRAT:	
No limit	Nov. 1–June 10.
OTTER:	
No limit	Nov. 1–Apr. 15.
WOLF:	
No limit	Nov. 1–Mar. 31.
WOLVERINE:	
Unit 25(C)—No limit	Nov. 1–Feb. 28.
Remainder of Unit 25—No limit	Nov. 1–Mar. 31.

(26) Unit 26.

(i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Unit 26(A) Controlled Use Area, which consists of Unit 26(A), is closed to the use of aircraft in any

manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1–Aug. 31 and from Jan. 1–Mar. 31. No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(C) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations;

(A) Motor-driven boats and snowmachines may be used to take caribou; however, shooting from a snowmachine in motion is prohibited.

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

Harvest limits	Open season
HUNTING	
BLACK BEAR:	
3 bears	July 1–June 30.
BROWN BEAR:	
Unit 26(A)—1 bear	Sept. 1–May 31.
Remainder of Unit 26—1 bear every four regulatory years	Sept. 1–May 31.
CARIBOU:	
Unit 26(A)—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Unit 26(B)—5 caribou; however, cow caribou may be taken only from Oct. 1–Apr. 30	July 1–June 30.
Unit 26(C)—10 caribou; however, not more than 5 caribou may be transported from Unit 26(C) per regulatory year	July 1–Apr. 30.
SHEEP:	
Unit 26(A)—those portions within the Gates of the Arctic National Park—3 sheep	Aug. 1–Apr. 30.
Unit 26(A)—that portion west of Howard Pass	No open season.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 26(A) and (B)—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season. Kaktovik residents may harvest sheep in accordance with a Federal community harvest strategy for Unit 26(C) which provides for take of up to two harvest limits of 3 sheep by designated hunter.	Aug. 10–Sept. 20. Oct. 1–Apr. 30.
MOOSE:	
Unit 26(A)—that portion of the Colville River drainage upstream from and including the Chandalar River drainage—1 moose; however, no person may take a cow accompanied by a calf.	Aug. 1–Mar. 31.
Remainder of Unit 26(A)—1 moose; however, no person may take a cow accompanied by a calf	Aug. 1–Dec. 31.
Unit 26(B)—that portion within two miles of the Dalton Highway	No open season.
Unit 26(B) Remainder and (C)—1 moose	Aug. 1–Dec. 31.
MUSK OXEN:	
Unit 26(C)—1 bull by Federal registration permit only; up to 10 permits may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of musk oxen, except by rural Alaska residents of the village of Kaktovik during seasons identified above.	Oct. 1–Nov. 15. Mar. 1–Mar. 31.
COYOTE:	
2 coyotes	Sept. 1–Apr. 30.
FOX, ARCTIC (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
FOX, RED (including Cross, Black and Silver Phases):	
Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Unit 26(C)—10 foxes	Nov. 1–Apr. 15.
HARE (Snowshoe and Tundra):	
No limit	July 1–June 30.
LYNX:	
2 lynx	Nov. 1–Apr. 15.
WOLF:	
10 wolves	Aug. 10–Apr. 30.

Harvest limits	Open season
WOLVERINE:	
1 wolverine	Sept. 1–Mar. 31
GROUSE (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
PTARMIGAN (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
COYOTE:	
No limit	Nov. 1–Apr. 15.
FOX, ARCTIC (Blue and White Phase):	
No limit	Nov. 1–Apr. 15
FOX, RED (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
LYNX:	
No limit	Nov. 1–Apr. 15.
MARTEN:	
No limit	Nov. 1–Apr. 15.
MINK AND WEASEL:	
No limit	Nov. 1–Jan. 31.
MUSKRAT:	
No limit	Nov. 1–June 10.
OTTER:	
No limit	Nov. 1–Apr. 15.
WOLF:	
No limit	Nov. 1–Apr. 30.
WOLVERINE:	
No limit	Nov. 1–Apr. 15.

Dated: August 3, 1994.

William L. Hensley,

Chair, Federal Subsistence Board.

Dated: August 5, 1994.

Phil Janik,

Regional Forester, USDA—Forest Service.

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