

Issued in Seattle, Washington, on November 29, 1995.

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[FR Doc. 95-31203 Filed 12-21-95; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

#### 15 CFR Part 2301

[Docket Number 950613151-5304-02]

RIN 0660-XX02

#### Public Telecommunications Facilities Program (PTFP), National Endowment for Children's Educational Television (NECET), Telecommunications and Information Infrastructure Assistance Program (TIIAP)

**AGENCY:** National Telecommunications and Information Administration, Commerce.

**ACTION:** Final Policy Statement and Conforming Rule Amendments.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, is publishing a Final Policy Statement modifying the interpretation of its policy on the use of NTIA-funded equipment and materials in connection with sectarian activities and making conforming rule amendments.

**EFFECTIVE DATE:** December 22, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jana Gagner, (202) 482-1816.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

On June 20, 1995, the National Telecommunications and Information Administration, U.S. Department of Commerce (NTIA), published a notice in the Federal Register proposing to modify NTIA's interpretation of its policy regarding the use of Federal grant funds awarded by NTIA in connection with sectarian activities.<sup>1</sup> Eight parties filed comments in response to the Notice.<sup>2</sup> Based on these comments and current jurisprudence, NTIA is hereby modifying its prior interpretation of its rules, which prohibited the use of

NTIA-funded equipment, facilities, and materials in connection with any sectarian activities, no matter how incidental.

Under its new interpretation, NTIA will retain its present requirement that grant funds not be used for purposes the "essential thrust of which are sectarian,"<sup>3</sup> but will modify its interpretation of this requirement as follows. No more than an attenuated or incidental benefit may inure to a sectarian interest if a grantee uses NTIA-funded facilities in connection with a sectarian activity. In addition, the use must fall within the broad scope of a grant program's statutory purposes. A grantee cannot, however, use NTIA grant funds primarily to support sectarian interests.

For the reasons discussed below, NTIA believes that this approach is consistent with current jurisprudence.<sup>4</sup> We also discuss below in greater detail the issues raised in the June Notice regarding NTIA's policy on sectarian activities,<sup>5</sup> NTIA's interpretation of its prior policy, comments received by NTIA in response to the Notice, and the application of NTIA's new policy to each of its grant programs. Our discussion is informed by relevant First Amendment jurisprudence, including the recent Supreme Court holding in *Rosenberger v. Rector and Visitors of the University of Virginia*, 115 S.Ct. 2510 (1995).

##### II. Background

*NTIA's Prior Policy.* In 1979, the Public Telecommunications Facilities Program (PTFP) of the NTIA adopted a rule prohibiting funding for any equipment, facilities, and other materials that would be used for any purposes the essential thrust of which is sectarian.<sup>6</sup> NTIA's interpretation of this rule has prohibited use of NTIA-funded facilities and materials in connection

<sup>3</sup> 15 CFR 2301.22(d). "Sectarian" is defined at 15 CFR 2301.1 as "that which has the purpose or function of advancing or propagating a religious belief." The PTFP regulation at 15 CFR §2301.22(d) provides, "During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian." NTIA considers these phrases to mean the same thing.

<sup>4</sup> See *Rosenberger v. Rector and Visitors of the University of Virginia*, 115 S.Ct. 2510 (1995); *Zobrest v. Catalina Foothills Sch. Dist. (Zobrest)*, 113 S.Ct. 2462 (1993); *Witters v. Washington Dep't of Services for the Blind*, 474 U.S. 481, 487 (1986); *Mueller v. Allen*, 463 U.S. 388 (1983).

<sup>5</sup> Notice, *supra* note 1.

<sup>6</sup> See 44 FR 30898 (1979) for explanation of NTIA's previous policy. PTFP's regulation regarding sectarian programming appears at 15 CFR 2301.22(d).

with any sectarian activity.<sup>7</sup> In implementing this "bright-line" policy interpretation, NTIA relied upon *Lemon v. Kurtzman*.<sup>8</sup>

NTIA's policy interpretation did, however, permit the "presentation in an educational or cultural context of music or art with a religious theme [or] of programs about religion. It [also did] not preclude distribution of instructional programming of a secular nature to church-related educational institutions."<sup>9</sup> In addition, sectarian-affiliated organizations could generally apply for grant funds,<sup>10</sup> subject, of course, to the prohibition on the use of NTIA-funded equipment, facilities, and materials for purposes the essential thrust of which is sectarian. NTIA's two newer grant programs, the National Endowment for Children's Educational Television (NECET) and the Telecommunications and Information Infrastructure Assistance Program (TIIAP), also adopted the same policy and interpretation.<sup>11</sup>

In enforcing this policy over the years, NTIA required grant applicants to certify that they would comply with its policy by signing an assurance to that effect.<sup>12</sup> By relying upon this assurance, NTIA avoided evaluating programming schedules for sectarian content as a routine practice. Such evaluation occurred only if information contained in the application itself suggested that the applicant would violate NTIA's policy, a complaint was filed with NTIA, or NTIA otherwise became aware of information that suggested that its policy was being or would be violated. By not routinely evaluating program content and information transmitted using NTIA-funded equipment and materials, NTIA avoided excessive Government entanglement with religion,

<sup>7</sup> This interpretation stems from policy statement, *infra* fn. 11 and was applied in the Fordham case.

<sup>8</sup> 403 U.S. 602 (1971). The constitutional test set forth in *Lemon*—and the consistency between NTIA's new policy interpretation and that test—are described in section III.A. of this policy statement, *infra*.

<sup>9</sup> Public Telecommunications Facilities Program; Report and Order, 44 FR 30898, 30902 (1979) (Report and Order).

<sup>10</sup> *Id.* at 30,900-30,901. Previously, organizations organized for primarily religious purposes were ineligible to apply for a PTFP planning grant, although their affiliates were eligible to apply. See 15 CFR 2301.4(b)(2). We are revising this rule to be consistent with the new policy adopted herein, such that applicant eligibility will be the same for both construction and planning grants. See the conforming amendments to §2301.4 (a) and (b).

<sup>11</sup> 60 FR 15636 (1995); 60 FR 8156 (1995).

<sup>12</sup> The applicant "will not use or allow the use of the facilities for essentially sectarian purposes for as long as the Applicant possesses or uses the facilities . . ." Public Telecommunications Facilities Program, Grant Application, Assurances, no. 30, at 9.

<sup>1</sup> 60 FR 32,142 (1995).

<sup>2</sup> The following eight parties filed comments in response to the Notice: Representative Richard Burr, the Corporation for Public Broadcasting, Fordham University, National Public Radio, North Carolina Public Radio Association, Lisa Owens, Southern Public Radio, and Wake Forest University.

as proscribed by the Supreme Court in *Lemon v. Kurtzman*.<sup>13</sup>

*The Challenge by Fordham University.* In 1993, Fordham University sued the Department of Commerce, alleging that NTIA's policy on sectarian broadcasting violated its right to free exercise of religion and its freedom of speech rights under the First Amendment of the Constitution. In *Fordham University v. Brown*, the court upheld NTIA's bright-line approach with respect to the PTFP as consistent with the First Amendment.<sup>14</sup> In *dicta*, however, the court noted that it did not consider whether there were other acceptable interpretations of the Establishment Clause.<sup>15</sup>

Since the *Fordham* decision, NTIA has become aware that some public broadcast stations include in their schedules programs that might constitute impermissible sectarian programming, which could make them ineligible for PTFP grants. This was highlighted, in fact, following the *Fordham* decision, when NTIA received several requests to modify its policy.

*Issuance of the Notice.* As a result, NTIA sought comment on whether it should modify its policy regarding sectarian programming and information. Specifically the Notice sought comment on: (1) Whether the current prohibition on using NTIA grant funds in connection with any sectarian activities should be continued, or whether there are alternative approaches that would also be consistent with the First Amendment; (2) the underlying policy rationale for a given approach; (3) how such policy would, as practical and constitutional matters, be implemented and enforced; (4) whether the same policy could and should be applied to all three NTIA grant programs (PTFP, TIIAP, and NECET) and, if not, what policy should pertain to each grant program; and (5) whether the current definition of "sectarian" would continue to be supportable if NTIA's current policy were modified.

*The Rosenberger Decision.* Subsequent to the issuance of NTIA's Notice, the Supreme Court decided *Rosenberger v. Rector and Visitors of the University of Virginia*,<sup>16</sup> which further supports NTIA's announced policy interpretation change. The Supreme Court held in *Rosenberger* that a state university had erred in relying on the First Amendment's Establishment

Clause to deny grant funding to a student group publisher of a Christian magazine, when that student group otherwise satisfied neutral funding criteria applied by the university in making financial grants to other student organizations. As discussed in more detail below, this decision serves as a basis, in part, for the new policy approach adopted by NTIA.

*Comments Filed in Response to the Notice.* All but one of the eight commenters supported a change in NTIA's policy interpretation. The one commenter favoring retention of NTIA's long-term policy objected to a religious organization receiving any benefit, however incidental, from NTIA's grant programs.<sup>17</sup> A majority of the supporting commenters, however, relied upon the recent Supreme Court case, *Rosenberger*, in arguing that a policy change was warranted. Most agreed that *Rosenberger* requires that the Federal government behave in a neutral manner toward religion. Two commenters recommended that NTIA adopt a specified or maximum percentage for the amount of permissible sectarian programming.<sup>18</sup> Other commenters recommended allowing a "reasonable minimal amount of sectarian programming."<sup>19</sup> Two other commenters expressed some concern that the proposed change in policy could result in excessive government entanglement with religion.<sup>20</sup>

As noted above, we solicited comments on whether the definition of "sectarian" needed to be altered in light of a possible policy change. Most commenters agreed that no change in the definition of "sectarian" was required to allow NTIA to modify its policy interpretation. One commenter contended, however, that the definition of "public telecommunications services" had to be redefined because it provides that public telecommunications services "[do] not include essentially sectarian programming."<sup>21</sup> This commenter also maintained that NTIA's prior policy should be changed because it burdened individuals' free exercise of religion in violation of the Religious Freedom Restoration Act.<sup>22</sup>

III. Application of the Modified Policy To NTIA'S Grant Programs

As indicated, NTIA's new policy will retain the requirement that grant funds not be used for purposes the essential thrust of which is sectarian. The interpretation of that requirement will be modified, however, such that as long as the grant funds are used to fulfill the statutory purposes of the grant programs, attenuated or incidental benefits to sectarian interests will be permissible.

#### A. Constitutional Basis for Modified Policy

We believe the alternative approach we are now adopting passes constitutional muster under First Amendment case law. Having analyzed our new approach in light of *Lemon v. Kurtzman*,<sup>23</sup> we conclude that our new policy is consistent with *Lemon* and other Supreme Court jurisprudence. *Lemon* established a three-prong test to determine whether government action would have the "primary effect" of establishing religion in violation of the Establishment Clause. Under *Lemon*, the constitutionality of a statute, regulation, or funding policy depends on whether: (1) it has a secular legislative purpose; (2) its principal or primary effect is one that neither advances nor inhibits religion; and (3) it avoids "an excessive government entanglement with religion."<sup>24</sup> If any one of these three questions is answered in the negative, government action is deemed unconstitutional.

Each of NTIA's grant programs has a secular purpose, which remains unchanged under the new policy, and thus NTIA's change in policy interpretation passes the first prong of the *Lemon* test. PTFP promotes public broadcasting, NECET supports development of children's programming, and TIIAP promotes new telecommunications technologies. Each grant award will be reviewed to ensure it meets the appropriate statutory purpose.

NTIA's new policy interpretation also satisfies the second prong of the *Lemon* test as NTIA grant funds still may not be used primarily to advance or inhibit religion. As recently underscored by the *Rosenberger* court, programs that neutrally extend benefits to recipients pass Establishment Clause muster, if religious interests are only incidentally served:

<sup>23</sup> 403 U.S. 602 (1971).

<sup>24</sup> *Id.* at 612-613.

<sup>13</sup> For a discussion of this point, see Section III.A. of this policy statement.

<sup>14</sup> 856 F. Supp. 684 (D.D.C. 1994), appeal docketed, No. 94-5229 (D.C. Cir. Aug. 22, 1994).

<sup>15</sup> *Id.* at 697-698.

<sup>16</sup> 115 S.Ct. 2510 (1995).

<sup>17</sup> Comments of Lisa Owens.

<sup>18</sup> Comments of National Public Radio at 2,5; Comments of Wake Forest at 2-3.

<sup>19</sup> Comments of North Carolina Public Radio Association at 1; Comments of Honorable Richard Burr at 1; Comments of Southern Public Radio at 1.

<sup>20</sup> Comments of Corporation for Public Broadcasting at 3; Comments of National Public Radio at 3.

<sup>21</sup> Comments of Fordham University at 16-17.

<sup>22</sup> Comments of Fordham University at 9.

[T]he [constitutional] guarantee of neutrality [toward religion] is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, *including religious ones*, are broad and diverse. . . . More than once have we rejected the position that the Establishment Clause even justifies, much less requires, a refusal to extend free speech rights to *religious speakers* who participate in broad-reaching government programs neutral in design. 115 S.Ct. at 2521-22 (emphasis added).

NTIA's new policy interpretation will ensure both that the program funds are neutrally provided and that any benefit to religion will be attenuated or incidental. NTIA will behave neutrally toward all grant applicants. All grant applicants (including sectarian organizations) will be eligible for funding (assuming they meet NTIA's other eligibility requirements), provided they comply with the policy that NTIA grant funds will not be used for purposes the essential thrust of which is sectarian.<sup>25</sup> If, as we discuss further below, questions arise regarding compliance, however, NTIA will determine whether the recipients' use of grant funds has the primary, and thus impermissible, effect of advancing or inhibiting religion. Where some benefit appears to inure to a sectarian interest, further analysis of the potential benefit will be undertaken to determine whether it is merely incidental or attenuated and thus permissible.

With regard to the third prong of the *Lemon* test—avoiding excessive entanglement of government with religion—NTIA's administrative procedures will remain essentially the same as before. NTIA will avoid analyzing individual programs unless a compliance problem comes to NTIA's attention. Thus, under the new policy, excessive government entanglement with religion will continue to be avoided as under our prior policy.

<sup>25</sup> The PTFP regulation at 15 C.F.R. § 2301.22(d) provides: "During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian." The assurance contained in the PTFP application kit provides that the applicant certify that he/she "will not use or allow the use of the facilities for essentially sectarian purposes for as long as the Applicant possesses or uses the facilities, whether or not this period extends beyond the ten-year Federal interest period following completion of this project." NTIA considers these phrases to mean the same thing. See also n. 3, *supra*.

### B. Application of New Interpretation to Particular NTIA Programs

Specific application of this new interpretation to each of the three NTIA grant programs is discussed below.

#### 1. The Public Telecommunications Facilities Program (PTFP).

Under the PTFP rules, a sectarian organization is eligible to apply as long as it meets the general PTFP eligibility requirements.<sup>26</sup> The purpose of PTFP is to make public telecommunications services available to U.S. citizens. PTFP funds the construction and planning of public telecommunications services,<sup>27</sup> subject to the eligibility requirements for applicants.<sup>28</sup>

To determine whether a grant would have the primary effect of establishing religion, NTIA will apply the *Lemon* test. To determine eligibility and the overall purpose of the planning and construction of public telecommunications facilities, NTIA will examine the applicant's proposal and its organizational purposes, as required by the statutory criteria. This approach ensures that grant awards will neither advance nor inhibit religion.

To avoid Government entanglement in religion and programming decisions, NTIA will continue its policy of reviewing the project narrative and supporting documents, while also relying on the applicants' assurances that they comply with NTIA's policy on sectarian activities. General monitoring of grantees' activities will continue under the normal administrative process pertaining to Federal assistance programs.

Accordingly, as under our prior policy, submission of broadcast schedules and program listings will not generally be required. We will not review the content of all programs or activities for sectarian content unless NTIA receives a complaint or otherwise becomes aware that an applicant or grantee may be using NTIA-funded equipment or materials in connection with a project the essential thrust of which is sectarian. For example, under the prior approach, a single sectarian program in a broadcast schedule would have rendered the project ineligible for

<sup>26</sup> To be eligible for a construction or planning grant, an applicant must be one of the following: a public broadcast station; a noncommercial telecommunications entity; a system of public telecommunications entities; a nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or a state or local government (or any agency thereof), or a political or special purpose subdivision of a state. See 15 CFR § 2301.4(a), (b).

<sup>27</sup> 47 U.S.C. 390-393; 15 CFR Part 2301 *et seq.*

<sup>28</sup> For definitions of eligible organizations and projects, see 15 CFR 2301.4.

funding. Under our new approach, a single program with sectarian aspects will not necessarily render the project ineligible.<sup>29</sup> In such instances, NTIA will examine the overall purpose of the project to determine if it is consistent with the PTFP's statutory purposes. Further inquiry may be made as necessary to ensure that any benefit to a sectarian interest is merely attenuated or incidental as permitted under current jurisprudence.

To implement this new approach, we do not need to revise the language in the PTFP regulation, assurance or definition of "sectarian" as it pertains to our policy on sectarian activities.<sup>30</sup> We shall, however, revise the definition of "public telecommunications services" to delete the last sentence which provides, "It does not include essentially sectarian programming."<sup>31</sup>

#### 2. National Endowment for Children's Educational Television (NECET)

Pursuant to NECET's enabling legislation,<sup>32</sup> in order to be eligible to apply for a grant, an applicant must be one of the following: an individual, corporation (for-profit or not-for-profit), partnership, association, joint stock company, trust, or state or local governmental entity.<sup>33</sup> A sectarian organization is eligible to apply, as long as it meets these eligibility requirements. NECET funds are available "to enhance the education of children through the creation and production of television programming specifically directed toward the development of fundamental intellectual skills."<sup>34</sup> Presently, in making a NECET grant, NTIA must, as a part of its evaluation and review process, review program proposals and

<sup>29</sup> While this example uses one program, we wish to emphasize that we are not setting any percentage or hourly maximum on the amount of sectarian programming that would be considered allowable.

<sup>30</sup> See 15 CFR 2301.1; 15 CFR 2301.5(d)(2)(xvii); 15 CFR 2301.22(d). The PTFP regulation at 15 CFR 2301.22(d) provides: "During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian." The assurance contained in the PTFP application kit provides that the applicant certify that he/she "will not use or allow the use of the facilities for essentially sectarian purposes for as long as the Applicant possesses or uses the facilities, whether or not this period extends beyond the ten-year Federal interest period following completion of this project." NTIA considers these phrases to mean the same thing.

<sup>31</sup> 15 CFR 2301.1.

<sup>32</sup> 47 U.S.C. 394.

<sup>33</sup> 47 U.S.C. 394(i)(2).

<sup>34</sup> 47 U.S.C. 394 (a).

content to determine whether it would meet these requirements.

Accordingly, review under our new policy interpretation will be essentially the same as before. The policy will be applied to each individual program for which a grant is sought, and the grantee must comply with the policy that NTIA grant funds will not be used for purposes the essential thrust of which is sectarian.<sup>35</sup> If the essential purpose of a program is to advance or inhibit religion, its funding would not be permissible. We do not believe the likelihood of entanglement is any greater than it was under our prior policy.

Under our prior policy interpretation, if, for example, part of a program encompassed a Catholic mass, the entire project would have been considered ineligible for funding. In contrast, under the new approach, we will make a determination on eligibility based on the test that any benefit to a sectarian interest resulting from the receipt of NTIA funds must be attenuated or incidental.

### 3. Telecommunications and Information Infrastructure Assistance Program (TIIAP)

To be eligible for a TIIAP grant, an applicant must be one of the following: a state or local government, an accredited college or university, or a non-profit entity. Individuals and for-profit organizations are not eligible to apply. A sectarian organization is eligible to apply, as long as the organization meets these requirements. TIIAP funds are provided for the "planning and construction of telecommunications networks for the provision of educational, cultural, health care, public information, public safety or other social services."<sup>36</sup>

In contrast to PTFP, however, where the broadcaster maintains editorial control, a TIIAP grantee may sometimes, but not always, exercise editorial control over the content of its communications network. For example, a network may involve a bulletin board where the operator does not have control of messages sent among

individuals. In some cases, therefore, it could be difficult for a TIIAP applicant to certify that facilities will not be used for essentially sectarian purposes. Accordingly, TIIAP awards will be subject to the policy which requires that the NTIA-funded facilities will not be used for essentially sectarian purposes to the extent that the applicant controls the content of network communications.<sup>37</sup>

To avoid excessive entanglement in religion, we will not review the content of information transmitted over TIIAP-funded networks unless NTIA receives a complaint or otherwise becomes aware that an applicant or grantee is using NTIA funded equipment or materials in connection with sectarian activities. In such instances, rather than examining only the questioned activity, NTIA will examine the overall purpose of the project to determine whether NTIA funding provides an attenuated or incidental benefit to the sectarian interest and thus whether it is permissible.

For example, TIIAP might provide funding to a local organization to establish a public computer bulletin board. As part of this bulletin board, a church-affiliated youth group might post information regarding meetings and meeting times, which includes a meeting time for a worship service. Under NTIA's prior policy, this project might have been ineligible for funding because the information regarding the sectarian meetings and meeting times would have appeared on the network. Applying NTIA's new policy interpretation, we would examine the overall purpose of the project to determine whether it fell within the TIIAP's statutorily authorized purposes and whether any benefit to religion was merely incidental or attenuated. If the answer to both questions was yes, such a grant would be permissible under the new policy interpretation.

### IV. Conclusion

NTIA's modified policy interpretation appropriately harmonizes the First Amendment's Free Exercise and Establishment Clauses, consistent with current jurisprudence. The new interpretation of our policy concerning use of NTIA grant funds in connection with sectarian activities will provide

<sup>37</sup> The special award condition for the TIIAP awards will read as follows: "During the Federal interest period, to the extent that the grantee maintains control over network transmissions, the grantee will neither use nor allow the NTIA-funded network to be used for purposes the essential thrust of which is sectarian." As noted in fn. 35, supra, NTIA considers this language to mean the same thing as not allowing the NTIA-funded network to be used for essentially sectarian purposes.

grant applicants greater flexibility, while continuing to avoid unwarranted government entanglement with religion.

### Rulemaking Requirements

1. It has been determined that this rule is not significant for purposes of Executive Order 12866.

2. Because this rule relates to public property, loans, grants, benefits, or contracts, it is exempt from the notice and comment and delayed effective date requirements of the Administrative Procedure Act (APA).

3. Because a notice of proposed rulemaking is not required by the APA or any other law, a Regulatory Flexibility Analysis is not required and was not prepared.

4. This rule contains information collection requirements subject to the provisions of the Paperwork Reduction Act. This collection has clearance from the Office of Management and Budget under OMB Approval No. 0660-0003.

5. This policy does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

### List of Subjects in 15 CFR Part 2301

Administrative procedure, Grant programs—communications, Reporting and recordkeeping requirements, Telecommunications.

(Catalog of Federal Domestic Assistance No. 11.550)

Dated: December 15, 1995.

Larry Irving,

*Assistant Secretary of Communications and Information.*

For the reasons set out in the preamble, 15 CFR part 2301 is amended as follows:

### PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

1. The authority for part 2301 continues to read as follows:

Authority: Public Telecommunications Financing Act of 1978, Pub. L. 95-567, 92 Stat. 2405, codified at 47 U.S.C. 390-394, 397-399b; the Public Broadcasting Amendments Act of 1981, Pub. L. 97-35, 95 Stat. 725; the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, section 5001, 100 Stat. 117; and the Public Telecommunications Act of 1988, Pub. L. 100-626, 102 Stat. 3207.

2. Section 2301.1 is amended by revising the definition of public telecommunications services to read as follows:

#### § 2301.1 Definitions.

\* \* \* \* \*

<sup>35</sup> Each award will contain a special award condition which requires that: "The grantee will neither use nor allow the NTIA-funded equipment, facilities or programming to be used for purposes the essential thrust of which is sectarian." There are often special award conditions attached to each award which provide conditions on the Federal funds in addition to those required by OMB Circulars. As noted above in n. 30, supra, NTIA considers this language to mean the same thing as not allowing the NTIA-funded equipment, facilities or programming to be used for essentially sectarian purposes.

<sup>36</sup> Pub. L. No. 103-317, 1994 U.S.C.C.A.N. (108 Stat.) 1724, 1747; 47 U.S.C. § 390-393.

*Public telecommunications services* means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications.

\* \* \* \* \*

3. Section 2301.4(a) is revised to read as follows:

**§ 2301.4 Eligible organizations and scope of projects.**

(a) Eligible applicants (Construction and Planning Grants). In order to apply for and receive a PTFP Construction or Planning Grant, an applicant must be:

- (1) A public or noncommercial educational broadcast station;
- (2) A noncommercial telecommunications entity;
- (3) A system of public telecommunications entities;
- (4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or
- (5) A state or local government (or agency thereof), or a political or special purpose subdivision of a state.

\* \* \* \* \*

4. Section 2301.4 is further amended by removing paragraph (b), redesignating paragraph (c) as (b), and revising the newly designated paragraph (b) to read as follows:

\* \* \* \* \*

(b) Scope of projects. An applicant that is eligible under paragraph (a) of this section may file an application with the agency for a planning or construction grant to achieve the following:

- (1) The provision of new public telecommunications facilities to extend service to areas currently not receiving public telecommunications services;
- (2) The expansion of the service areas of existing public telecommunications entities;
- (3) The establishment of new public telecommunications entities serving areas currently receiving public telecommunications services; or
- (4) The improvement of the capabilities of existing licensed public broadcast stations to provide public telecommunications services.

\* \* \* \* \*

5. Paragraphs (d) through (f) of § 2301.4 are redesignated paragraphs (c) through (e) respectively.

[FR Doc. 95-31089 Filed 12-21-95; 8:45 am]  
BILLING CODE 3510-60-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 165**

[Docket No. 88P-0030]

RIN 0910-AA11

**Beverages: Bottled Water; Correction**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of November 13, 1995 (60 FR 57076). The document established a standard of identity for bottled water; recodified the standard of quality for bottled water; revised the definition of bottled water to include mineral water and ingredient uses of this product; and defined "artesian water," "ground water," "mineral water," "purified water," "sparkling bottled water," "spring water," "sterile water," and "well water." The document was published with some errors. This document corrects those errors.

**EFFECTIVE DATE:** May 13, 1996.

**FOR FURTHER INFORMATION CONTACT:** Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFS-306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4681.

In FR Doc. 95-27798, appearing on page 57076 in the Federal Register of Monday, November 13, 1995, the following corrections are made in § 165.110 *Bottled water*:

**§ 165.110 [Corrected]**

- 1. On page 57124, in the third column, in paragraph (a)(2)(v), in the fourth line, the phrase "amount of carbon dioxide that" is corrected to read "amount of carbon dioxide from the source that".
- 2. On page 57126, in the first column, in paragraph (b)(4)(i)(C)(4), beginning in the third line, "Method 501.2" is removed.

Dated: December 15, 1995.

William K. Hubbard,  
Associate Commissioner for Policy  
Coordination.

[FR Doc. 95-31200 Filed 12-21-95; 8:45 am]  
BILLING CODE 4160-01-F

**21 CFR Part 558**

**New Animal Drugs For Use In Animal Feeds; Zoalene**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by A. L. Pharma, Inc. The supplemental NADA provides for wider assay limits for zoalene Type A medicated articles. FDA is amending the regulation concerning medicated feed applications to reflect the approval.

**EFFECTIVE DATE:** December 22, 1995.

**FOR FURTHER INFORMATION CONTACT:** William G. Marnane, Center for Veterinary Medicine (HFV-143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-2701.

**SUPPLEMENTARY INFORMATION:** A. L. Pharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed supplemental NADA 11-116, which provides for widening the current assay limits for zoalene Type A medicated articles. FDA reviewed the data and information submitted and is amending 21 CFR 558.4 to provide for an assay range of 92 to 104 percent for zoalene Type A medicated articles.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

**§ 558.4 [Amended]**

2. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the "Category I" table in the entry for "Zoalene" in the second column by removing "98-104" and adding in its place "92-104".