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Tuesday
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Briefings on How To Use the Federal Register—
For information on briefings in Denver, CO, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

DENVER, CO

WHEN: December 15; at 9 a.m.
WHERE: Room 239, Federal Building, 1961 Stout Street, Denver, CO.
RESERVATIONS: Call the Denver Federal Information Center, 303–844–6575

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1204

Availability of Official Information

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: On July 28, 1987, the Board published interim regulations revising its Freedom of Information Act (FOIA) regulations to conform with the Freedom of Information Reform Act of 1986 (Reform Act) and guidelines promulgated pursuant to the Reform Act by the Office of Management and Budget (OMB). At that time, it requested comments. No comments have been received. The Board is adopting the interim regulations as final regulations.

EFFECTIVE DATE: December 1, 1987.

ADDRESS: Send written inquiries to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, (202) 653–7200.

SUPPLEMENTARY INFORMATION:

List of Subjects in 5 CFR Part 1204

Freedom of Information, Practices and procedures, Privacy.

PART 1204—AVAILABILITY OF OFFICIAL INFORMATION

Accordingly, the interim rule revising 5 CFR Part 1204 which was published at 52 FR 28123–28125 on July 28, 1987, is adopted as a final rule without change, under authority of 5 U.S.C. 552 and 1205.

Dated: November 23, 1987.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 87-27413 Filed 11-30-87; 8:45 am]
BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87-161]

Oriental Fruit Fly; Removal of Portions of Los Angeles County and Orange County From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by removing portions of Los Angeles County and portions of Orange County in California from the list of areas designated as quarantined areas. This action is necessary to relieve restrictions that are no longer needed to prevent the artificial spread of the Oriental fruit fly into noninfested areas of the United States. The effect of this action is to remove restrictions imposed by Oriental fruit fly emergency regulations on the interstate movement of regulated articles from this formerly quarantined area.

DATES: Interim rule effective November 24, 1987. Consideration will be given only to comments postmarked or received on or before February 1, 1988.

ADDRESSES: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87–161. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 661 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Dacus dorsalis* (Hendel), is an extremely destructive pest of numerous fruits (especially citrus fruits), nuts, vegetables, and berries. Heavy infestations of this pest can result in complete loss of these crops. The short life cycle of the Oriental fruit fly permits the rapid development of serious outbreaks.

A document published in the **Federal Register** on July 22, 1987, (52 FR 27529–27536, Docket Number 87–095) and effective on July 17, 1987, established the Oriental fruit fly regulations (7 CFR 301.93 *et seq.*). These regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the artificial spread of the Oriental fruit fly to noninfested areas of the United States. These regulations, among other things, designated portions of Los Angeles County and Orange County as a quarantined area.

A document published in the **Federal Register** on October 26, 1987 (52 FR 39899, Docket Number 87–138) and effective on October 20, 1987, added additional portions of Orange County to the list of areas designated as quarantined areas.

Recent trapping surveys by inspectors of Animal and Plant Health Inspection Service and state agencies indicate that the portions of Los Angeles and Orange Counties that were quarantined by the regulation published on July 22, 1987, are no longer infested with Oriental fruit fly. However, the additional area in Orange County that was quarantined by the regulation published on October 26, 1987, remain infested with Oriental fruit fly. We are therefore removing from the list of quarantined areas the portions of Los Angeles and Orange Counties quarantined by Docket Number 87–095, published July 22, 1987, but are leaving in effect the quarantine of another area in Orange County effected by Docket 87–138, published October 26, 1987.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this

interim rule without prior opportunity for public comment. The area in Los Angeles and Orange Counties listed in Docket Number 87-095 was quarantined due to the possibility that the Oriental fruit fly could be spread artificially from this area to noninfested areas of the United States. Since this situation no longer exists, and because the quarantined status of these portions of Los Angeles and Orange Counties imposes an unnecessary regulatory burden on the public, we are taking immediate action to remove this area from the list of quarantined areas.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, and because this rule relieves a regulatory restriction, there is good cause under 5 U.S.C. 553 to make this interim rule effective upon signature. We will consider comments that are postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. As soon as possible after the comment period closes, we will publish another document in the **Federal Register** discussing the comments we received and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Within the portions of Los Angeles and Orange Counties that are being removed from the quarantined area, there are fewer than 60 small entities that may be affected, including commercial growers of tomatoes and cucumbers, 38 nurseries, no more than 9 outdoor or mobile fruit stands, and 2 community gardens. The effect of this rule on these entities should be insignificant, since most of their sales are local intrastate and were not affected by the regulatory provisions we are removing; those sales that were affected were generally of articles that could be moved after compliance with treatment or inspection provisions of the regulations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Oriental fruit fly, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.93-3 Quarantined areas

2. In § 301.93-3, paragraph (c), the designation of the quarantined areas is amended by removing the paragraph that begins "That portion of Los Angeles and Orange Counties * * *".

Done at Washington, DC, this 24th day of November, 1987.

Donald Houston

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-27591 Filed 11-30-87; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 4; Doc. No. 5041S]

General Crop Insurance Regulations; Canning and Processing Tomato Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new 7 CFR 401.114 the Canning and Processing Tomato Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on canning and processing tomatoes in an endorsement to a master crop insurance policy which contains the standard terms and conditions concerning most crops.

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as November 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.114, the Canning and Processing Tomato Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring tomatoes.

The provisions for insuring tomatoes contained in 7 CFR 401.114, will supersede those provisions contained in 7 CFR Part 438, the Canning and Processing Tomato Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 438 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will amend the title of 7 CFR Part 438 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding this new Canning and Processing Tomato Endorsement to 7 CFR Part 401 as outlined below, FCIC makes other changes in the provisions for insuring tomatoes as follows:

1. Section 1—Modify the provision that requires insured tomatoes to be under contract with a canner to require that the contract must be completed to the extent that a binding agreement exists requiring the insured to deliver a stated amount of tomatoes and requiring the processor to accept that amount. This change is made because of difficulties involving claimed oral agreements.

2. Section 3—Include provisions for stage guarantees in the endorsement rather than in the actuarial documents. Stage guarantee levels have been standardized nationwide and the first stage production guarantee has been increased to 50% of the final stage guarantee.

Change the method used to determine crop stage. All stage intervals will now be determined by plant growth stage rather than specific calendar dates. This change is made so that growers planting at different times will have similar time periods and incurred costs before reaching the second stage.

4. Section 5—Add the date the canner or processor no longer accepts production as an event that ends the insurance period. This change is made due to previous loss adjustment problems in situations when the buyer was no longer accepting production.

5. Section 6—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying required additional premium for guideline unit division by section, ASCS Farm Serial Number, or practice.

On Monday, September 14, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 34658, to add a new 7 CFR 401.114 the Canning and Processing Tomato Endorsement. The public was given 30 days in which to submit written comments, data, and opinions of the rule.

One comment was received from the California Farm Bureau with respect to FCIC's requirement that, to be eligible for crop insurance, the tomatoes must be grown under contract with a canner or processor and that the contract be made available to FCIC. Another comment from the California Tomato Growers Association was received also dealing with the contract issue and other items as indicated below. The comments from both sources, and FCIC's responses are as follows:

1. *Comment:* Many lenders require crop insurance on loans made to growers but a completed written contract may not be available until late in the growing season. FCIC requires a contract before insurance is issued.

Response: FCIC understands the problem as outlined by both commenters. As pointed out in the comments, and as FCIC is aware, in the general course of business, growers agree to deliver and processors agree to receive specified tonnage of specified varieties on specified delivery dates. All that remains is for the parties to negotiate prices and terms of delivery. With this in mind, FCIC is willing to accept written evidences of such agreements between grower and processor in lieu of a final contract. FCIC is unable to insure acreage under a processing contract in excess of that acreage required to produce the agreed upon tonnage under the contract terms, therefore, the need for an agreement between the parties is necessary to the insurance process.

2. *Comment:* It was suggested that FCIC include in the policy the date when the processor no longer accepts production as the date the insurance ends.

Response: FCIC agrees. Regardless of when a processor fails to accept delivery of contracted tomatoes, either at the processor's own plant, or when the processor sells to another processor, the date that such failure to accept or the date of selling to another processor, is the date insurance ends.

3. *Comment:* The suggestion was made to leave the end of insurance period at October 20, instead of October 10, because growers normally harvest between October 10 and 17.

Response: FCIC agrees to leave the date of October 20 in California.

In view of the above considerations and with changes as indicated, FCIC adopts the rule published at 52 FR 34658 as a final rule.

List of Subjects in 7 CFR Part 401

Crop insurance, Canning and processing tomato.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.)*, the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR Part 401) by adding a new § 401.114 in Chapter IV of Title 7 of the CFR to be known as the Canning and Processing Tomato Endorsement (7 CFR 401.114), effective for the 1988 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as § 401.114, Canning and Processing Tomato Endorsement, effective for the 1988 and succeeding crop years, to read as follows:

§ 401.114 Canning and processing tomato endorsement.

The provisions of the Canning and Processing Tomato Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Canning And Processing Tomato Endorsement

1. Insured crop.

a. The crop insured will be tomatoes which are planted for harvest as canning or processing tomatoes.

b. In addition to the tomatoes not insurable in section 2 of the general crop insurance policy, we do not insure any tomatoes:

(1) Which are not grown under a written contract with a canner or processor or excluded from the canner or processor contract for, or during, the crop year. (Prior to the date you report your acreage, the contract must be completed to the extent that a binding agreement exists requiring the insured to deliver a stated amount of tomatoes and requiring the processor to accept that amount.); or

(2) Except in California, that are grown on acreage where tomatoes have been grown in either of the two previous crop years.

c. A late planting option will be available on tomatoes.

2. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period.

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against under section 1 of the general crop insurance policy, we will not insure any loss of production due to failure to market the tomatoes unless such failure is due to actual physical damage from a cause specified in subsection 2.a.

3. Production guarantees.

a. The production guarantees per acre are progressive by stages and increase, at specified intervals, to the final stage production guarantee. The stages and production guarantees are:

(1) First stage is from planning until first fruit set, the first stage production guarantee is 50% of the final stage production guarantee;

(2) Second stage is from first fruit set until harvest, the second stage production guarantee is 80% of the final stage production guarantee; and

(3) Third stage (final stage) is harvested acreage, the third stage production guarantee is the final stage guarantee.

b. Any acreage of tomatoes damaged to the extent that growers in the area would not further care for the tomatoes, will be deemed to have been destroyed even though the tomatoes continue to be cared for. The production for such acreage will be the guarantee for the stage (either first or second) in which such damage occurs.

4. Annual premium.

a. The annual premium amount is computed by multiplying the final stage production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the canning and processing tomato policy for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

5. Insurance period.

The date the canner or processor no longer accepts production under the contract which covers the insured acreage planted for the contract year is added to Section 7 of the general crop insurance policy as one of the events which designates the end of the insurance period. The calendar date for the end of the insurance period in California is October 20 of the calendar year in which the tomatoes are normally harvested (October 10 in all other States).

6. Unit division.

Tomato acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year; and either

a. Acreage planted to insured tomatoes is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage can be easily determined; and

(2) The tomatoes are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured tomatoes is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Tomatoes planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

7. Notice of damage or loss.

a. In addition to the notices required in section 8 of the general crop insurance policy, if you are going to claim an indemnity on any unit, you must give us notice within 72 hours:

(1) Of when harvest would normally start if any acreage on the unit is not to be harvested;

(2) Of discontinuance of harvest on the unit; or

(3) If you are unable to deliver production to the canner or processor.

b. The tomato vines on any hard-harvested acreage must not be destroyed until inspected by us if an indemnity is to be claimed on the unit.

c. For the purpose of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

8. Claim for indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tomatoes to be counted (see subsection 8.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (tons) to be counted for a unit will include:

(1) All harvested tomato production marketed and any tomato production which does not meet the quality requirements of the canner or processor contract due to not being timely marketed;

(2) All appraised production which will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tomato farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, put to another use without our prior written consent, or damaged solely by an uninsured cause;

(c) For acreage which does not qualify for the final period guarantee, any amount of appraised and harvested production in excess of the difference between the final period guarantee and the guarantee applicable to such acreage;

(d) Production lost due to uninsured causes; and

(e) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of tomatoes becomes general in the county and is reappraised by us;

(ii) Further damaged by an insured cause and is reappraised by us; or

(iii) Harvested.

9. Cancellation and termination dates.

The cancellation and termination dates are February 15 in California and April 15 in all other states.

10. Contract changes.

The date by which contract changes will be available in your service is November 30 preceding the cancellation date for counties with a February 15 cancellation date and December 31 preceding the cancellation date for all other counties.

11. Meaning of terms.

a. "First fruit set" means the reproductive stage of the plant when 30% of the plants have produced a fruit that has reached a minimum of one inch in diameter.

b. "Harvest" means severance of tomatoes from the vines for the purpose of delivery to a canner or processor.

Done in Washington, DC, on November 24, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-27549 Filed 11-30-87; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. No. 9; Doc. No. 4892S]

General Crop Insurance Regulations; Cotton Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new 7 CFR 401.119, to be known as the Cotton Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on cotton in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops.

The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as August 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs of prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.119, the Cotton Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring cotton.

The provisions for insuring cotton contained in 7 CFR 401.119 supersede those provisions contained in 7 CFR Part 421, the Cotton Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 421 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will amend the title of 7 CFR Part 421 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Cotton Endorsement to 7 CFR Part 401, FCIC changes the provisions for insuring cotton as follows:

1. Section 1—Add a provision indicating that cotton destroyed to comply with other U.S. Department of Agriculture programs will not be insured. This provision was added to prevent insurance from attaching to a crop that is intended for destruction or destroyed to comply with other USDA programs.

2. Section 8—Add a provision that provides for harvested—unharvested guarantees replacing previous stage guarantees. This change was made due to the administrative problems encountered in determining which stage damage occurs in and whether farmers in the area generally would further care for the crop.

3. Section 6—Include unit division provisions to modify the unit definition in the general crop insurance policy to exclude unit division by share.

On Monday, September 14, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 34660, to add a new section to be known as 7 CFR 401.119—Cotton Endorsement. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule.

A total of seven comments were received; two from Grower Associations, four from insurance companies under contract with FCIC, and one from the Crop Hail Insurance Actuarial Association (CHIAA).

The comments dealt with two proposed changes: Addition of harvested/unharvested guarantees replacing previous stage guarantees; and inclusion of unit division provisions to modify the unit definition in the general crop insurance policy to exclude unit division by share. In addition, CHIAA comments proposed deletion of the Initial Planting Date requirement because CHIAA claims it only affects the replant payment and provides that replant coverage is not the same for all insureds. This date is on the actuarial table. CHIAA states that there is a wide variation in initial planting dates, from 30 to 60 days, and that the initial planting date could create problems in those years when planting is ahead of what is considered timely planting.

CHIAA also proposed deletion of the requirement that the replanting pattern be the same as the original planting pattern because it may not be practical to replant in the same pattern as originally.

One company recommended that irrigated and non-irrigated acreage be separated by units on the basis that these practices are farmed differently and that actuarial rates and coverages are different.

Finally, CHIAA proposed that, instead of the replant payment being established as the actual cost of replanting, that 20% of the production guarantee limited by an amount specified in the policy be paid.

1. Earliest planting date: CHIAA proposed deletion of the earliest planting date on the basis that it affects only the replant payment; provides that replant payment is not the same for all insureds; and that the date is not readily available to the insured. The initial planting varies widely ranging from 30 to 60 days depending in the area. FCIC

considered the implications of actuarial soundness in these issues, particularly with respect to adverse selectivity. Initial planting dates were established to prevent a producer from intentionally planting early, in many cases well in advance of sales closing/cancellation, and selecting against the insurance company.

If the crop survives the early planting undamaged, the producer can choose to cancel prior to the cancellation date as the chances of a normal crop are increased when early planted. The insured thereby obtains insurance coverage during this early, high risk time at no cost. However, if the crop is damaged in the early growing period, the insured may collect a replant payment and plant the crop at the normal time, with FCIC paying the replanting costs through deduction from the premium.

The variation in the dates reflect different response to early planting of various crops and weather conditions prevalent in the areas during early spring. The Corporation has determined to retain the earliest planting date.

2. Original planting pattern: CHIAA proposes to delete the requirement that the replanting pattern be the same as the initial planted pattern on the basis that the actuarial table does not reference planting patterns and that replanting is a salvage situation and it may not be practical to replant in the original pattern.

The Corporation has reviewed this issue. There is no requirement that the pattern of replant be the same as the original pattern. However, if the pattern of replant was uninsurable as an original pattern, the full liability is not reinstated. Although replanting is a salvage operation, reinstatement of full liability for a practice which will probably not produce the established yield raises questions as to the statutory limit on the guarantee.

3. Replanting payment: CHIAA takes issue with the replanting provision establishing the actual cost as the basis for replant payment in that it creates administrative difficulties. CHIAA suggests an alternative of making the replant payment 20% of the production guarantee, limited by an amount specified in the policy.

FCIC has determined not to adopt this suggestion. This issue has been raised in the past. Several private insurance companies have opposed recommendations of a specified amount. Replanting is required in the event of loss before the final planting date (as it may be extended). The replanting payment is to reimburse the insured for his reasonable out-of-pocket expenses in replanting. It is not intended as an indemnity for loss. Both the insured and the Corporation benefit by replanting. The insured has the opportunity to harvest a normal yield. The Corporation, without further loss, will not have to pay an indemnity. No basis exists under this scheme to allow payment of ore than actual expenses. The present limit on replant payments will remain.

4. Minimum of 25% production to count on harvested acreage: It was proposed that the definition of "harvest", providing for a 25% minimum production to count on harvested acreage be deleted because of the possibility of misunderstanding in light of the provisions of the Federal Crop Insurance Act, as amended, which provide for coverage of 75 percent of the recorded or appraised average yield. The proposed 25% production to count is interpreted as a deductible of 25% of the guarantee.

Although the purpose of this provision did not concern the statutory 75% insurance requirement, FCIC agrees with the suggestion to delete the reference to 25% production to count on harvested acreage and has deleted such language.

5. Harvested/unharvested guarantees replacing previous stage guarantees: FCIC has determined that there is no basis in fact for continuing cotton insurance based on stage guarantees. Many administrative problems were encountered in attempting to determine in which stage damage would occur and whether farmers in an area generally would not further care for the crop. The provisions for cotton insurance in the proposed rule are based on unharvested and harvested guarantees. The principle objection in all comments was to the provision that appraised production will include not less than 25% of all unharvested acreage. All comments appeared to interpret this provision as being out of compliance with the Federal Crop Insurance Act, as amended, because 75% coverage is not available for unharvested acreage.

The intent of this provision was to discourage replanting of a crop when it is too late to expect cotton to reach maturity. FCIC agrees with the comments to the extent that the provision seems in conflict with the Act and has changed this section to include in the appraised production to count not less than 25 % of the production guarantee per acre for any acreage of cotton that is immature when we determine that harvest of cotton becomes general in the country.

FCIC has also changed the meaning of "harvest" to delete the requirement that at least 25% of the per acre production guarantee be removed.

6. Inclusion of unit division provisions to modify the unit definition in the general crop insurance policy to exclude unit division by share:

One insurance company, commenting that the provision for cotton represented no change, recommended that unit definition be the same as for other disaster crops.

FCIC agrees that the unit division is unchanged from that in effect last year. Further, FCIC does not contemplate changing the unit division for cotton to conform to other crops because of previous insuring experience. Because yield records are kept by farm serial number, further unit division would result in adverse insuring experience. For this reason, the recommendation is not adopted.

7. Irrigated and non-irrigated acreage be separated by units: FCIC and the Office of General Counsel (OGC) shared joint concerns on this issue. FCIC on yields being based on the way the insured farms, and OGC over establishing units by practice. Including non-irrigated corners of a center pivot irrigation system in the irrigated unit is in response to these concerns. The determination was made to combine the total yield of both practices to determine a yield for the unit upon which the guarantee is based.

After consideration of the comments, FCIC has added further changes in the cotton endorsement in response to comments received, and makes another change for clarification, as follows:

1. Sections 1 and 10—Add a clarification of skip-row acreage determination and specify that skip-row yield factors are not applicable if non-cotton rows are planted with another crop.

2. Section 1—Add a subsection to allow small grains planted between cotton rows for erosion control (the general crop insurance policy does not allow insurance for cotton planted with another crop).

3. Section 7—Add a provision indicating a minimum appraisal equal to 25% of the guarantee will be made for any cotton that is immature when the harvest of cotton becomes general in the country.

Because the earliest date for filing contract changes in the service office is November 30, good cause is shown for making this rule effective in less than 30 days.

With the considerations noted above, FCIC herewith adopts the rule published at 52 FR 34666 as a final rule.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Cotton endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.119 Cotton Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.119 Cotton endorsement.

The provisions of the Cotton Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Cotton Endorsement

1. Insured crop and acreage.

a. The crop insured will be American Upland lint cotton.

b. The acreage insured of skip-row cotton will be the acreage occupied by the rows of cotton after eliminating the skipped-row portions.

c. In addition to the cotton not insurable in section 2 of the general crop insurance policy, we do not insure any cotton:

(1) Which is not irrigated and, in the same calendar year, is grown:

(a) Where a hay crop was harvested; or

(b) Where a small grain crop reached the heading stage.

(2) Planted in excess of the acreage limitations applicable to the farm by any program administered by the United States Department of Agriculture; or

(3) Destroyed, designated to be destroyed, or put to another use in order to comply with other United States Department of Agriculture programs.

d. In lieu of subsection 2.e.(7) of the general crop insurance policy, we do not insure any cotton planted with another spring planted crop.

e. A late planting agreement will be available for cotton.

2. Causes of loss.

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual premium.

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

4. Insurance period.

a. In lieu of subsection 7.b. of the general crop insurance policy (harvest of the unit), insurance will end upon removal of the cotton from the field.

b. The calendar dates for the end of the insurance period are as follows:

(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson Karnes, Goliad, Victoria, and Jackson counties, Texas, and all Texas counties lying South thereof, September 30;

(2) Arizona, California, New Mexico, Oklahoma, and all other Texas counties, January 31;

(3) All other states, December 31.

5. Unit division.

a. In lieu of subsections 17.q.(1) and 17.q.(2) of the general crop insurance policy, a unit is defined as all insurable acreage of cotton in the county in which you have an insured share and which is identified by a single ASCS Farm Serial Number at the time insurance first attaches for the crop year.

b. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy.

c. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will cause those units to be combined.

6. Notice of damage or loss.

For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production to be counted for a unit will include:

(1) All harvested production; and

(2) All appraised production which will include:

(a) Mature and potential production on unharvested acreage;

(b) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(c) Not less than the applicable guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Not less than 25 percent of the production guarantee per acre for any acreage of cotton that is immature when we determine that harvest of cotton becomes general in the county.

(e) Appraised production on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(i) Not put to another use before harvest of cotton becomes general in the county and is reappraised by us;

(ii) Further damage by an insured cause is reappraised by us; or

(iii) harvested; and

(f) Appraised production of not less than the harvested guarantee on acreage where the stalks have been destroyed without our written consent.

c. When mature cotton (harvested or unharvested) has been damaged solely by insured causes, the production to count will be reduced if, on the date the final notice of loss is given by the insured, the price quotation for cotton of like quality (price quotation "A") at the applicable spot market is less than 75 percent of price quotation "B". Price quotation "B" will be that day's spot market price quotation at the same market of cotton of the grade, staple length, and micronaire reading shown by the actuarial table for this purpose. The pounds of production to be counted will be determined by multiplying the number of pounds (harvested and appraised) of mature cotton by price quotation "A" and dividing the result by 75 percent of price quotation "B".

8. Cancellation and termination dates.

The cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crocket, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other states.	Apr. 15

9. Contract changes.

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and November 30 preceding the cancellation date for all other Counties.

10. Meaning of terms.

a. "Cotton" means only American Upland Cotton.

b. "County" means the land defined in the general crop insurance policy and any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

c. "Crop year" means the period beginning at planting and extending through the end of the insurance period shown in section 4. and is designated by the calendar year in which the crop is normally planted.

d. "Harvest" means the removal of the seed cotton on each acre from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

e. "Mature cotton" means cotton which can be harvested either manually or mechanically and will include both unharvested and harvested cotton.

f. "Skip-row" means planting patterns consisting of alternating rows of cotton and fallow rows or rows of another crop as defined by ASCS (if non-cotton rows are occupied by another crop any yield factor normally applied for skip row cotton will not be applicable).

g. "Spot market" means a market so designated by the Secretary of Agriculture by Regulation (7 CFR Part 27) pursuant to 26 U.S.C. 4862.

Done in Washington, DC on November 17, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-27550 Filed 11-30-87; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 10; Doc. No. 4881S]

General Crop Insurance Regulations; Rice Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new 7 CFR 401.120, to be known as the Rice Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on rice in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as August 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt for the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.120, the Rice Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring rice.

The provisions for insuring rice contained in 7 CFR 401.120 will supersede those provisions contained in 7 CFR Part 424, the Rice Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 424 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will amend the title of 7 CFR Part 424 by separate document so that the provisions therein are effective only through the 1987 crop year (52 FR 35269, September 18, 1987).

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Rice Endorsement to 7 CFR Part 401, FCIC makes other changes in the provisions for insuring rice as follows:

1. Section 1—Add a provision indicating that rice destroyed to comply with other U.S. Department of Agriculture programs will not be insured. This provision was added to prevent insurance from attaching to a crop that is destroyed to comply with other programs.

2. Section 5—Add unit division provisions in the endorsement. The language used modifies the unit definition in the general crop insurance policy to exclude unit division by share.

On Monday, September 14, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 34666, to add a new subpart 7 CFR 401.120—Rice Endorsement, to provide the regulations containing the provisions of crop insurance protection on rice in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule. One comment was received from the Crop Hail Actuarial Insurance Association (CHIAA) with respect to initial planting date, original planting pattern, and replanting payment issues.

1. Earliest planting date: CHIAA proposed deletion of the earliest planting date on the basis that it affects only the replant payment; provides that replant payment is not the same for all insureds; and that the date is not readily available to the insured. The initial planting varies widely ranging from 30 to 60 days depending in the area.

FCIC considered the implications of actuarial soundness in these issues, particularly with respect to adverse selectivity. Initial planting dates were established to prevent a producer from intentionally planting early, in many cases well in advance of sales closing/cancellation, and selecting against the insurance company.

If the crop survives the early planting undamaged, the producer can choose to cancel prior to the cancellation date as the chances of a normal crop are

increased when early planted. The insured thereby obtains insurance coverage during this early, high risk time at no cost. However, if the crop is damaged in the early growing period, the insured may collect a replant payment and plant the crop at the normal time, with FCIC paying the replanting costs through deduction from the premium.

The variation in the dates reflect different response to early planting of various crops and weather conditions prevalent in the areas during early spring. The Corporation has determined to retain the earliest planting date.

2. Original planting pattern: CHIAA proposes to delete the requirement that the replanting pattern be the same as the initial planted pattern on the basis that the actuarial table does not reference planting patterns and the replanting is a salvage situation and it may not be practical to replant in the original pattern.

The Corporation has reviewed this issue. There is no requirement that the pattern of replant be the same as the original pattern. However, if the pattern of replant was uninsurable as an original pattern, the full liability is not reinstated. Although replanting is a salvage operation, reinstatement of full liability for a practice which will probably not produce the established yield raises questions as to the statutory limit on the guarantee.

3. Replanting payment: CHIAA takes issue with the replanting provision establishing the actual cost as the basis for replant payment in that it creates administrative difficulties. CHIAA suggests an alternative of making the replant payment 20% of the production guarantee, limited by an amount specified in the policy.

FCIC has determined not to adopt this suggestion. This issue has been raised in the past. Several private insurance companies have opposed recommendations of a specified amount. Replanting is required in the event of loss before the final planting date (as it may be extended). The replanting payment is to reimburse the insured for his reasonable out-of-pocket expenses in replanting. It is not intended as an indemnity for loss. Both the insured and the Corporation benefit by replanting. The insured has the opportunity to harvest a normal yield. The Corporation, without further loss, will not have to pay an indemnity. No basis exists under this scheme to allow payment of more than actual expenses. The present limit on replant payments will remain.

4. Finally, a recommendation was made to eliminate red rice in the quality adjustment provision, since crop rotation will significantly reduce the amount of red rice present in a field.

Red rice was added to the quality provisions to address the problems encountered with its eradication. While crop rotations significantly reduce the amount, it may not eliminate the problem completely and the presence of Red rice does affect the quality of the rice crop. This suggestion was not adopted.

With the exception of minor changes for clarity and formal considerations noted above, FCIC herewith adopts the rule published at 52 FR 34666 as a final rule.

Because the latest date for filing contract changes in some service offices is November 30, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Rice endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.120 Rice Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.120 Rice endorsement.

The provisions of the Rice Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Rice Endorsement

1. Insured crop.

a. The crop insured will be rice which is planted for harvest as grain.

b. In addition to the rice not insurable under section 2 of the general crop insurance policy, we do not insure any rice:

(1) Destroyed or put to another use in order to comply with other United States Department of Agriculture programs; or;

(2) Which is not irrigated.

c. A late planting agreement is available.

2. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period.

(1) Adverse weather conditions (excluding drought);

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against under section 1 of the general crop insurance policy, we will not insure against my loss of production due to application of saline water.

3. Annual premium.

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

4. Insurance period.

The calendar date for the end of the insurance period is October 31 of the calendar year on which the rice is normally harvested.

5. Unit division.

a. In lieu of subsections 17.q.(1) and 17.q.(2) of the general crop insurance policy, a unit will be all insurable acreage of rice in the county in which you have an insured share and which is identified by a single ASCS Farm Serial Number at the time insurance first attaches for the crop year.

b. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy.

c. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will cause those units to be combined.

6. Notice of damage or loss.

For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of rice to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production to be counted for a unit will include all harvested production including any production from a second rice crop harvested in the same crop year (Any mature production from volunteer rice growing in the rice will be counted as rice on a weight basis).

(1) Mature rough rice production which otherwise is not eligible for quality adjustment will be reduced in volume by .12 percent for each .1 percentage point of moisture in excess of 12.0 percent; or

(2) Mature rough rice production which, due to insurable causes:

(a) Has a total milling yield (heads, second heads, screening, and brewers) of less than 68 pounds per hundredweight;

(b) The whole kernel weight is less than 55 pounds per hundredweight for medium and short grain varieties;

(c) The whole kernel weight is less than 48 pounds per hundredweight for long grain varieties;

(d) Contains more than 4.0 percent chalky kernels in long grain varieties;

(e) Contains more than 6.0 percent chalky kernels in medium or short grain varieties;

(f) Contains more than 3.0 percent chalky kernels in other types; or

(g) Contains more than 2.5 percent red rice will have the production adjusted by:

(i) Dividing the value per pound of such rice, by the price per pound of U.S. No. 3 rough rice; and

(ii) Multiplying the result by the number of pounds of such rice.

(The applicable price for No. 3 rough rice will be the nearest mill center price on the earlier of the day the loss is adjusted or the day the rice was sold).

c. The production to be counted will include all appraised production as follows:

(1) All unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good rice farming practices;

(2) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(3) Appraised production on unharvested acreage.

(4) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of rice becomes general in the county and is reappraised by us;

(ii) Further damaged by an insured cause and is reappraised by us; or

(iii) Harvested.

d. A replanting payment is available under this endorsement. The replanting payment per acre will not exceed 400 pounds multiplied by the price election, multiplied by your share.

8. Cancellation and termination dates.

The cancellation and termination dates are:

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, Dimmit Counties, Texas, and all Texas counties south thereof.	February 15.
Missouri	April 15.
Florida	March 15.
All other Texas counties and all other states.	March 31.

9. Contract changes.

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and November 30 preceding the cancellation date for all other counties.

10. Meaning of terms.

a. "County" means the land defined in the general crop insurance policy and any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

b. "Harvest" means the completion of combining or threshing of rice on the unit.

c. "Mill center" means any location in which two or more mills are engaged in milling rough rice.

d. "Replanting" means performing the cultural practices necessary to replant insured acreage to rice.

e. "Second crop rice" means regrowth of a stand of rice originating from the initially insured rice crop following harvest and which can be harvested in the same crop year.

Done in Washington, DC, on November 18, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-27551 Filed 11-30-87; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Stabilization and Conservation Service

7 CFR Part 770

Commodity Certificates, In Kind Payments, and Other Forms of Payment

AGENCY: Commodity Credit Corporation and Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations found at 7 CFR Part 770 with respect to the manner in which the Commodity Credit Corporation (CCC) issues and exchanges commodity certificates. These amendments are necessary due to changes which have been made in the design of the commodity certificate and to provide that, as determined and announced by CCC, "commodity specific" certificates may be exchanged for commodities other than those stated on the certificate.

DATES: *Effective Date:* December 1, 1987. Comments must be received on or before December 31, 1981 in order to be assured of consideration.

ADDRESS: Send comments to: Director, Fiscal Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Angelena V. Bracht, Director, Fiscal Division, ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447-6163.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and number of the Federal Assistance Programs to which this interim rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Rice Production Stabilization—10.065; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, Published at 48 FR 29115 (June 24, 1983).

Background

In accordance with the Agricultural Act of 1949, as amended, and the Commodity Credit Corporation Charter Act, as amended, CCC may issue commodity certificates which may be exchanged for commodities in CCC inventory. These certificates were first issued pursuant to an interim rule published on March 11, 1986 (51 FR 8428). Approximately 8.8 million certificates have been issued since that time.

Originally, commodity certificates could only be transferred by the original holder of the certificate by a date specified on the commodity certificate. This date was referred to as the "First Transfer Deadline". After the issuance of these certificates, it was determined that it was not necessary to restrict the first holder's ability to transfer the certificate. Accordingly, an interim rule was published on December 3, 1986, (51 FR 43580) which amended 7 CFR 770.4(f) with respect to certain entries made on commodity certificates to provide that the "First Transfer Deadline" would not be applicable. Due to a new design of the commodity certificate, the references in 7 CFR 770.4(f) which relates to these entries are no longer applicable. Therefore, 7 CFR 770.4(f) is amended to reflect these changes. A corresponding technical amendment is also made in 7 CFR 770.4(c).

7 CFR 770.4(g)(1) currently provides that if a commodity certificate is not a "generic" certificate, i.e., one that may be exchanged for any type of commodity which is made available from CCC inventory, such a certificate must be exchanged only for the commodity specified on the certificate. In order to provide greater flexibility in the exchange of these "commodity specific" certificates in the event such commodities are not in CCC inventory, 7 CFR 770.4(g)(1) is amended to provide that other commodities, as determined and announced by CCC, may be obtained from CCC inventory in exchange for such certificates.

CCC will soon be issuing commodity certificates which reflect the change in design format. Accordingly, it has been determined that this rule will become effective upon publication.

List of Subjects in 7 CFR Part 770

Cotton, Feed grains, Price support programs, Wheat and Rice.

Accordingly, 7 CFR Part 770 is amended as follows:

PART 770—[AMENDED]

1. The authority citation for Part 770 continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Act, as amended; 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101A, 103A, 105A, 107C, 107D, 107E, and 405 of the Agricultural Act of 1949, as amended; 99 Stat. 1419, as amended, 1407 as amended, 1395 as amended, 1446, 1383, as amended; 63 Stat. 1504, as amended (7 U.S.C. 1441–1, 1444–1, 1444b, 1444b–2, 1444b–3, 1444b–4, 1445d, and 1425).

2. Section 770.4(c) is amended by removing the first sentence and inserting the following sentence to read "Any person may transfer a commodity certificate to any other person".

3. Section 770.4(f) is revised to read as follows:

§ 770.4 Commodity certificates.

* * * * *

(f) *Cash redemption start date.* (1) The person to whom a generic certificate is issued which has a date entered in block D may submit such certificate, endorsed to CCC, at the issuing county ASCS office for payment by check in the amount of the certificate on or after the date entered in block D through the expiration date of the certificate. Such person may not exchange the certificate for commodities owned by CCC, except as otherwise agreed upon between such person and CCC.

(2) The person to whom a generic certificate is issued which has an entry of "S/H" in block D may exchange such certificate for commodities owned by CCC.

(3) The person to whom a commodity specific certificate is issued which has a date entered in block D may submit such certificate, endorsed to CCC, to the Kansas City Commodity Office for the specific commodity entered in block C beginning on the date entered in block D through the expiration date of the certificate. Such certificate may not be exchanged for cash, except as otherwise agreed on by CCC.

(4) All other certificates may be transferred and exchanged as determined and announced by CCC.

4. Section 770.4(g)(1) is amended by removing the second sentence and inserting in lieu thereof "If a certificate is not a 'generic certificate', such certificate may be exchanged for the commodity specified on the certificate, except as may be determined and announced by CCC".

Signed at Washington, DC, on October 20, 1987.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation, and Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87–27398 Filed 11–30–87; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 981

Almonds Grown in California; Administrative Rules and Regulations Governing Quality Control

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will change the administrative rules and regulations established under the Federal marketing order for California almonds to change the tolerance for inedible almonds from 3 percent to 0 percent. The change is designed to improve the quality of California almond shipments.

EFFECTIVE DATE: December 1, 1987.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is issued under marketing Order No. 981, (7 CFR Part 981) as amended, regulating the handling of almonds grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and assigned OMB control No. 0581–0071.

There are approximately 105 handlers of almonds under the marketing order for California almonds who will be subject to regulation during the course of the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $100,000 and small agricultural service firms have been defined as those whose gross annual receipts are less

than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This final rule will lower from 3 percent to 0 percent the tolerance for inedible almonds in each variety of almonds processed by handlers. The change is implemented in view of a projected high quality 1987 almond crop. It is the general policy of the Almond Board of California (ABC) to recommend adjustments in the inedible tolerance based on crop quality.

When crop quality is poor, for example, the percentage of inedibles in lots of almonds received by handlers from growers is high, and handlers have more difficulty removing inedibles to meet low tolerances for inedibles within the constraints of industry processing capabilities. Inedibles are removed by a combination of machine and manual labor. Thus, handlers need the flexibility provided by a higher tolerance percentage for inedibles when the quality of almond lots is poor. On the other hand, when crop quality is good and there are few inedibles in lots of almonds received by handlers, handlers have the capability of removing a larger percentage of the inedibles. In this case, a lower tolerance is warranted. Therefore, it is the Agency's view that the lower tolerance for inedible almonds can be implemented without handlers incurring significant additional costs.

This action amends § 981.442(a)(4) of Subpart—Administrative Rules and Regulations issued under marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California. The action is based on a recommendation of the ABC, which is responsible for local administration of the order, and upon other information. Notice of this action was published in the **Federal Register** (52 FR 34677) on September 14, 1987. Comments were invited from interested persons until September 29, 1987. One comment was received.

Section 981.408 of the regulations defines the term "inedible kernel" as "a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds, or which has embedded dirt or other foreign material not easily removed by washing." Section 981.42(a) provides that handlers shall have the inspection agency (Federal-State Inspection Service) determine the percent of inedible kernels in each variety received by handlers and report this determination to ABC.

Section 981.442(a)(4) of the administrative rules and regulations currently provides that the weight of inedible kernels in each variety in excess of 3 percent of the kernel weight received by a handler shall constitute that handler's disposition obligation. This weight must be accumulated during processing and delivered to the ABC or ABC accepted crushers, feed manufacturers, or feeders.

This action amends § 981.442(a)(4) by changing the tolerance for calculating a handler's disposition obligation from 3 percent to 0 percent. This action will allow for stricter quality control while still maintaining ample supplies of almonds to meet trade demand. The change is intended to provide a higher quality product to almond users and consumers. The industry has the capability of implementing such stricter control due to the projected high quality of the 1987 almond crop.

The commenter, Duane Jardine of Jardine Organic Ranch, a handler located in Paso Robles, California, believes that the quality control provisions of the order do not insure the quality of the product put on the market. The commenter points out that while these provisions require a handler to ship to inedible outlets a quantity of almonds equal to the quantity of inedible almonds the handler receives in excess of the tolerance, there is no requirement that the handler ship inedible almonds in fulfillment of this obligation. While this is correct, handlers are disinclined to ship edible quality almonds to inedible outlets due to the much higher price handlers receive for these almonds in normal markets.

The commenter believes that the only way to guarantee quality is through outgoing inspection. While the almond order contains authority for such inspection, the ABC has not recommended using this authority. One consideration in making such a recommendation would be the additional costs to handlers of such inspections. The commenter also objects to that portion of the current § 981.442(a)(5) which states that deliveries to inedible outlets containing less than 10 percent almond meat content shall not be credited against handlers' inedible disposition objections. Handlers only receive credit against their disposition obligations for the meat content of lots delivered to inedible outlets, and this meat content is determined by the inspection agency (Federal-State Inspection Service). The 10 percent requirement is intended to prevent handlers from requesting inspection on lots which have an insignificant meat content.

Therefore, for the reasons specified, no changes are made in this final rule based on the comment received.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the ABC's recommendation and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action is intended to apply to 1987 crop almonds which handlers are now receiving and processing, and (2) handlers are aware of this action, which was recommended by the ABC at a public meeting, and need no additional time to comply with the requirements.

List of Subjects in 7 CFR Part 981

Agricultural Marketing Service, Marketing agreements and orders, Almonds, California.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Section 981.442 is amended by revising the first sentence of paragraph (a)(4) to read as follows:

§ 981.442 Quality control.

(a) * * *

(4) *Disposition obligation.* The weight of inedible kernels in excess of 0 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. * * *

* * * * *

Dated: November 27, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87-27701 Filed 11-30-87; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 981

Almonds Grown in California; Expenses and Assessment Rate and Administrative Rules and Regulations Concerning Crediting for Marketing Promotion Expenditures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a creditable assessment rate of $0.025 per pound of almonds (kernelweight basis) received by handlers during the 1987–88 season under the Federal marketing order for California almonds and changes administrative rules and regulations established under the almond order to allow handlers of California almonds to receive, within certain limits, a 150 percent credit against their advertising assessments for payments to the Almond Board of California (Board) for generic promotion including paid advertising. This action will give handlers additional flexibility in meeting their assessment obligations.

EFFECTIVE DATE: December 1, 1987.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of almonds who are subject to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $100,000, and small agricultural service firms have been defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This final rule allows handlers of California almonds to receive credit for certain types of direct marketing promotion expenditures, including paid advertising, against their 1987–88 assessments up to $0.025 per kernelweight pound. This same creditable assessment rate has been in effect each crop year since 1979–80.

The rule also allows a handler to receive credit for 150 percent of payments made to the Board for generic promotion including paid advertising against the handler's creditable assessment obligation incurred on the first 4,000,000 redetermined kernelweight pounds received by such handler during a crop year on an ongoing basis, within an overall limit equal to the handler's annual creditable assessment obligation. Previously, handlers have received credit for 100 percent of authorized expenditures for their own paid advertising, 150 percent of the purchase price of sample packages purchased from the Board for distribution to charitable or educational outlets, and 100 percent of authorized expenditures for other marketing promotion activities. Therefore, it is the Agency's view that the action will reduce the costs to handlers of meeting their creditable assessment obligations by making more credit available to more handlers.

Information collection requirements in this rule have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581–0071.

This action establishes a new § 981.336 and revises § 981.441 under marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California. The action is based on two unanimous recommendations of the Board and upon other available information.

Section 981.81 of the order provides that each handler shall pay to the Board such sum, less any amounts credited pursuant to § 981.41, based on such rate per pound of almonds (kernelweight basis) received by such handler for such handler's own account as the Secretary of Agriculture establishes based on a finding that it is necessary to provide funds to meet the authorized Board expenses and operating reserve requirements.

Paragraph (c) of § 981.41 of the order provides that the Board, with the approval of the Secretary, may allow handlers to receive credit for their direct marketing promotion expenditures, including paid advertising, against their annual assessments. That paragraph also provides that a handler shall not receive credit for allowable expenditures that would exceed that portion of such handler's assessment obligation which is designated for marketing promotion, including paid advertising. A new § 981.336 establishes that portion of the 1987–88 crop year assessment rate for which handlers may receive credit at $0.025 per pound of almonds (kernelweight basis). This same creditable assessment rate has been established for each crop year since 1979–80.

Paragraph (e) of § 981.41 provides that, before crediting is undertaken and once a recommendation is received from the Board, the Secretary shall prescribe appropriate rules and regulations as are necessary to effectively administer provisions for creditable advertising expenditures. Section 981.441 currently prescribes rules and regulations to regulate the crediting of payments to advertising media, for distribution of sample packages of almonds to charitable and educational outlets, for promotional materials purchased from the Board, and for certain costs related to mail order promotions. This action revises that section to add authority for the crediting of payments by handlers to the Board for generic promotion including paid advertising by the Board.

This rule allows a handler to receive credit for 150 percent of payments made to the Board against the creditable assessment obligation incurred on the first 4,000,000 redetermined kernelweight pounds received by such a handler during a crop year. However, this 4,000,000 kernelweight-pound limit is reduced by any poundage on which a handler incurs a creditable assessment obligation and receives 150 percent credit pursuant to paragraph (d)(1)(i)(A) of § 981.441. Paragraph (d)(1)(i)(A) provides that a handler may receive credit for 150 percent of the purchase price of sample packages purchased from the Board for distribution to charitable or educational outlets against the creditable assessment obligation

incurred on the first 4,000,000 redetermined kernelweight pounds received by such handler during a crop year. This action provides an alternate method for handlers to receive 150 percent credit, while retaining the total 4,000,000 kernelweight pound limit for both methods combined.

Handlers wishing to use the new provision are required to file a claim with the Board on ABC Form 31 and make payment to the Board by January 31 of the crop year for which credit is desired. ABC Form 31 is the standard form which handlers are required to file with the Board to claim credit for their marketing promotion and paid advertising activities.

Handlers choosing to use this method of crediting for all or a portion of their assessment obligations will not be eligible to use the extension of time provided for in paragraph (b) of § 981.441. Paragraph (b) provides that paid advertisements must be published, broadcast, or displayed and other marketing promotion activities must be conducted during the crop year for which credit is requested except that a handler may receive credit, up to a maximum of 40 percent of such a handler's total creditable advertising and promotion obligation, for expenditures made for advertisements published, broadcast, or displayed and other marketing promotion activities conducted no later than December 31 of the subsequent crop year. The crop year under the order is the 12 months from July 1 to the following June 30, inclusive.

This rule gives handlers additional flexibility in meeting their assessment obligations. The action should be particularly beneficial to small handlers who do not have the resources to mount an effective paid advertising or marketing promotion campaign on their own. The action might also benefit handlers who, because they have no brand name or because they do not market their almonds directly to consumers, find the current rules concerning crediting for marketing promotion and paid advertising less advantageous to their marketing strategies than handlers who do have a brand name or market their almonds directly to consumers.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the **Federal Register** on July 28, 1987 (52 FR 28158). Written comments were invited from interested persons until August 27, 1987. Two comments were received. One commenter supported the proposal in its entirety. The second commenter, Brian C. Leighton, opposed the proposal.

In his comment, Mr. Leighton does not raise specific objections to the $0.025 per-pound creditable advertising rate or the 150 percent credit against advertising assessments which were proposed on July 28. Rather, he challenged the basis of the Board's recommendations, the composition of the Board, the fairness of the creditable advertising provision of the rules and regulations issued under the marketing order, the manner in which the assessments received by the Board are handled, the legality of the advertising and promotion provisions of the almond marketing order itself, and the Department's certification of the rule's impact on small businesses. Mr. Leighton requested that the proposal be held in abeyance until the Department evaluates the Board's advertising projects and submits the matter to all handlers for a vote.

The Department disagrees with the views set forth in Mr. Leighton's comment. It is the Department's view that the marketing order and the implementing regulations issued thereunder were lawfully promulgated under the Agricultural Marketing Agreement Act of 1937. Furthermore, all of the regulations issued under the marketing order were discussed at open meetings and voted upon by the Board, which represents all of the industry, and then recommended to the Secretary. The recommendations and other pertinent information were evaluated by the Department prior to implementation under lawful rulemaking procedures. Board membership is apportioned between cooperative and independent segments of the industry based on each group's percentage of total almond production. Thus, the Board is representative of the industry as a whole and has been established in accordance with the order and the rules and regulations.

The commenter objects to the fact that the $0.025 1987–88 creditable assessment rate was recommended by the 1986–87 Board rather than by the 1987–88 Board. The commenter states that the 1986–87 Board had six members affiliated with the largest cooperative handler whereas the 1987–88 Board has only four members affiliated with that entity. While this is true, the 1987–88 Board had the opportunity to change or rescind the $0.025 recommendation at two meetings which were held before the proposed rule on this matter was issued.

Further, the Department disagrees with the commenter's contention that "a vast majority of all handlers" do not favor the creditable advertising assessment. As stated above, the Board, which is representative of the industry, unanimously supports the provision and the rule at issue.

Furthermore, at any time, the Board may recommend to the Secretary a change in the assessment rate or suspension of the creditable advertising provisions of the regulations. If a majority of industry members opposed the provisions, it is likely that this view would be predominant among Board members. Those who may object to the provisions of this rule had the opportunity to make their views known at any time to their duly elected representatives and at the Board's meetings, as well as to comment on the proposal as published in the **Federal Register**.

The Department also disagrees with the commenter's opinion that creditable advertising provisions of the almond marketing order violate each handler's right to free speech under the U.S. Constitution. Neither the order nor the rules and regulation issued thereunder require any handler to engage in paid, brand advertising in order to receive credit towards their assessments. Handlers may also receive credit for generic advertising, the distribution of sample packages of almonds to charitable or educational outlets, for the purchase of promotion materials from the Board, and for certain costs related to handler mail order promotions. In addition, this rule adds another method by which handlers may receive credit other than through brand advertising.

The Department also believes that there is no basis to the charge that creditable advertising assessments are not properly handled by the Board. Annually, the Department reviews the Board's income and expenditures and its promotional activities and requires a financial audit of the Board which is reviewed by the Department.

In addition, the commenter's objections to the Department's finding on the impact of this rule on small businesses are inaccurate. This rule is intended to provide additional flexibility to all handlers, large and small. This rule imposes no new obligations on handlers.

For the reasons stated above, the Department denies Mr. Leighton's request to delay implementation of this rule.

After consideration of all relevant matter presented, including the Board's recommendation, the comments received, and other available information, it is found that the changes as previously proposed and hereinafter

set forth will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) The regulation provides handlers with additional flexibility in crediting advertising and promotion expenditures, and handlers should have the opportunity to utilize this icreased flexibility as soon as possible; (2) handlers are aware of this action and need no additional time to comply; and (3) no useful purpose would be served by delaying the effective date of this action.

List of Subjects in 7 CFR Part 981

Agricultural Marketing Service, Marketing agreements and orders, Almonds, California.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Add a new § 981.336 to read as follows (This section will not appear in the code of Federal Regulations):

§ 981.336 Expenses and assessment rate.

An assessment rate for the crop year ending June 30, 1988, payable by each handler shall be established in accordance with § 981.81, less any amount credited pursuant to § 981.41, but not to exceed $0.025 per pound of almonds (kernelweight basis).

3. Amend § 981.441 by adding a new paragraph (e) as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(e) Credit shall be granted for payments made to the Board for use by the Board for generic marketing promotion including paid advertising subject to the following conditions:

(1) A handler may receive credit for 150 percent of a payment made to the Board against the creditable assessment obligation incurred on the first 4,000,000 redetermined kernelweight pounds received by a handler during a crop year: *Provided:* That, this poundage limit shall be reduced by any poundage on which a handler incurs an obligation and receives 150 percent credit pursuant to paragraph (d)(1)(i)(A) of this section.

(2) No credit shall be granted in excess of the creditable assessment obligation incurred on 4,000,000 redetermined kernelweight pounds received by a handler during a crop year.

(3) When a handler elects to use this method of crediting for all or a portion of such handler's assessment obligation, the extension provided for pursuant to paragraph (b) of this section shall not apply.

(4) Handlers must file claims with the Board on ABC Form 31 in order to receive credit for payments made to the Board. No credit at 150 percent shall be granted unless a claim is filed and payment made on or before January 31 of the then current crop year.

Dated: November 27, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87–27702 Filed 11–30–87; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87–154]

Restrictions on Importation of Horses From Spain; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Correction of interim rule.

SUMMARY: We are correcting a typographical error in the preamble of an interim rule published on October 23, 1987 (52 FR 39616, Docket Number 87–128) that included Spain among the countries in which Veterinary Services considers African horse sickness to exist.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder at (301) 436–8695.

Correction

The following correction is made to FR Doc. 87–24559, published on October 23, 1987, on pages 39616–39617:

On page 39616, third column, third paragraph under Background, line 7, change "indecision" to "imprecision".

Done in Washington, DC, this 24th day of November, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87–27592 Filed 11–30–87; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0613]

Truth in Lending; Competitive Equality Bank Act; Limitations on Interest Rates; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: The Board is correcting technical errors (particularly in certain dates in the preamble) in the final rule implementing section 1204 of the Competitive Equality Banking Act of 1987 which appeared in the **Federal Register** on November 9, 1987 (52 FR 43178).

FOR FURTHER INFORMATION CONTACT: Adrienne D. Hurt, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412.

SUPPLEMENTARY INFORMATION: On November 9, 1987, the Board issued a final rule amending Regulation Z to implement section 1204 of the Competitive Equality Banking Act (52 FR 43178). In four places in the preamble there were references to the effective date of the rule being "prior to" December 9, 1987. The references should have read "on or after" December 9, 1987. This notice corrects those and other technical errors.

Corrections

The following corrections are made in FR Doc. 87–26049, Truth in Lending; Competitive Equality Banking Act; Limitations on Interest Rates.

1. On page 43178, first column, the second to the last line in the first paragraph of the summary, "prior to" should read "on or after."

2. On page 43178, second column, the sixth line from the bottom, "prior to" should read "on or after."

3. On page 43179, first column, fifth paragraph, first line, "Renogotiable" "should be "Renegotiable."

4. On page 43179, first column, the 12th line from the bottom of the page, "prior to" should read "on or after."

5. On page 43179, first column, the eigth line from the bottom of the page, "prior to" should read "on or after."

6. On page 43179, third column ninth paragraph second line, "credit" should be "creditor."

7. On page 43180, third column, line 27, "oustanding" should be "outstanding."

By order of the Board of Governors of the Federal Reserve System, dated November 24, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-27478 Filed 11-30-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-104-AD; Amdt. 39-5779]

Airworthiness Directives; British Aerospace Model 125-800A Series Airplanes

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model 125-800A series airplanes, which requires the addition of drain holes in the aileron tab and the inboard aileron hinge to prevent water accumulation within the tab. This amendment is prompted by a report that the aileron tabs on certain airplanes were not fitted with drain holes, and this could result in entrapment of water within the tab, possibly causing the tab to exceed its mass balance limits. This condition, if not corrected, could lead to flutter if control surface mass balance limits are exceeded.

EFFECTIVE DATE: January 13, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the addition of drain holes in the aileron tab and the inboard aileron hinge to prevent water accumulation within the tab on certain British Aerospace Model 125-800A series airplanes, was published in the **Federal Register** on September 10, 1987 (52 FR 34226).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the NPRM.

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

It is estimated that 30 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,400.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($80). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to British Aerospace Model 125-800A series airplanes, listed in British Aerospace (BAe) Service Bulletin 57-64-[3067], dated November 29, 1985, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent entrapment of water within the aileron tab accomplish the following:

A. Within the next 100 landings or within one year after the effective date of this AD, whichever occurs sooner, modify the aileron tab and the inboard aileron hinge to provide drainage in accordance with BAe Service Bulletin 57-64-[3067], dated November 29, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 13, 1988.

Issued in Seattle, Washington, on November 16, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-27531 Filed 11-30-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-65-AD; Amdt. 39-5792]

Airworthiness Directives; Gates Learjet Models 23, 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25, 25A, 25B, 25C, 25D, 25F, 28, 29, 35, 35A, 36, and 36A Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Gates Learjet series airplanes, which currently requires relocation of the battery vent inlet to eliminate the potential for a fire and explosion within the battery, caused by fuel leaking and entering the battery inlet vent. This action expands the applicability of the existing AD to include additional affected airplanes.

EFFECTIVE DATE: January 19, 1988.

ADDRESSES: The applicable service information may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 86-05-05, Amendment 39-5248 (51 FR 11709; April 7, 1986), to include additional models of Gates Learjet airplanes that would require a modification to relocate the battery vent inlet, was published in the **Federal Register** on June 22, 1987 (52 FR 23466).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

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

The number of additional airplanes affected by this proposed AD is unknown, since the FAA does not have the means to determine which airplanes have been modified in the field. However, for each affected airplane, it will require approximately 13.5 manhours to accomplish the required actions, and the average labor cost will be $40 per manhour. Existing hardware and components are utilized for vent relocation; therefore, no parts cost is anticipated. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $540 per airplane.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is futher certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($540). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 86-05-05, Amendment 39-5248 (51 FR 11709; April 7, 1986), by revising the applicability statement and paragraph A., as follows:

Gates Learjet Corporation: Applies to the following Gates Learjet models and serial numbers, equipped with a "flow through" battery vent system with the inlet located on the bottom (belly) of the airplane:

Model	Serial numbers
23 series	003 thru 099.
24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A	100 thru 357.
25, 25A, 25B, 25C, 25D, 25F	003 thru 061; 066 thru 373.
28	001 thru 005.
29	001 thru 004.
35, 35A	001 thru 570; 589 thru 600.
36, 36A	001 thru 053; 055.

Compliance required as indicated, unless previously accomplished.

To eliminate the potential for a fire and explosion within the battery, caused by leaking fuel entering the battery vent, accomplish the following within the next 200 flight hours:

A. Relocate the battery inlet vent in accordance with instructions contained in Gates Learjet Corporation Service Bulletin (SB) 23/24/25-334B, dated February 19, 1987, for Models 23, 24, and 25 series airplanes; SB 28/29-24-5A, dated October 7, 1985, for Models 28 and 29 series airplanes; or SB 35/36-24-10, dated July 18, 1987, for Models 35 and 36 series airplanes; or later FAA-approved revisions.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This amendment becomes effective January 19, 1988.

Issued in Seattle, Washington, on November 20, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-27532 Filed 11-30-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-57-AD; Amdt. 39-5790]

Airworthiness Directives; Gulfstream American Model G-73 (Mallard) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Gulfstream American Model G-73 (Mallard) series airplanes, which requires visual inspection of the elevator up stop to determine if there is sufficient overlap of the contact surfaces of the elevator control torque tube arm and the elevator up stop bolt hex head, and requires the eventual installation of a new, larger surface elevator up stop kit. This amendment is prompted by reports of the elevator control system jamming in the full stick-back takeoff position. This condition, if not corrected, could lead to loss of control of the airplane.

EFFECTIVE DATE: January 19, 1988.

ADDRESSES: The applicable service information may be obtained from Frakes Aviation, Cleburne Airport, Route 3, Box 229-B, Cleburne, Texas 76031. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Simmons, FAA, Southwest Region, Special Programs Branch, AWS-190, 4400 Blue Mound

Road, Fort Worth Texas 76193-0190; telephone (817) 624-5199.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires visual inspection of the elevator up stop and eventual installation of a new surface elevator up stop kit on Gulfstream American Model G-73 series airplanes, was published in the **Federal Register** on June 11, 1987 (52 FR 22331).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the following rule.

It is estimated that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Required parts will be furnished by Frakes Aviation at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,560.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($80). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Gulfstream American (Frakes Aviation): Applies to Model G-73 (Mallard) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent jamming of the elevator control system, accomplish the following:

A. Within 15 days after the effective date of this AD, visually inspect the overlapping contact surface between the elevator control torque tube arm, P/N 109410, and the elevator up stop bolt hex head, P/N G19-5-22, in accordance with Frakes Aviation Service Bulletin G-73-FA26, dated May 1, 1987 (hereinafter referred to as SB G-73-FA26), or later FAA-approved revisions.

1. If the elevator control torque tube arm is not overlapping the stop bolt hex head by one-half or more of the stop bolt hex dimension, or if the center lines of the stop bolt hex head and the elevator control torque tube arm are not aligned within ⅛ inch (0.125 inch) side to side, prior to further flight install Frakes Aviation Stop Kit, P/N FA112723K1, in accordance with SB G-73-FA26, or later FAA-approved revision.

2. If the elevator control tube arm is overlapping the stop bolt hex head by one-half or more of the stop bolt hex head dimension, and if the center lines of the stop bolt hex head and the elevator control torque tube are aligned within ⅛ inch (0.125 inch) side to side, within the next 100 hours time-in-service install Frakes Aviation Stop Kit, P/N FA112723K1, in accordance with SB G-73-FA26, or later FAA-approved revisions.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

C. An alternate means of compliance, which provides an acceptable level of safety, may be used when approved by the Manager, Airplane Certification Branch, FAA, Southwest Region.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Frakes Aviation, Cleburne Airport, Route 3, Box 229-B, Cleburne, Texas 76031. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

This amendment becomes effective January 19, 1988.

Issued in Seattle, Washington, on November 20, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-27533 Filed 11-30-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ANE-21; Amdt. 39-5764]

Airworthiness Directives; Hartzell Propeller, Inc., Models HC-B4TN-5( )L/LT10574(B,K), LT10574A(B,K), and LT10574A(S)(B,K)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires repetitive inspections of Hartzell Propeller, Inc., Model HC-B4TN-5( )L/LT10574(B) propellers for blade cracks until replacement with redesigned blade Models LT10574A(B) or LT10574A(S)(B). This amendment is needed to prevent the possibility of blade failure of the redesigned blade models which could result in engine separation from the aircraft. The amendment requires repetitive inspections of the redesigned blade models.

DATES: Effective December 2, 1987.

Compliance required as prescribed in the body of the AD, unless already accomplished.

Incorporation by Reference—Approved by the Director of the Federal Register as of December 2, 1987.

ADDRESSES: The applicable service document may be obtained from: Hartzell Propeller, Inc., 1800 Covington Avenue, Piqua, Ohio 45356.

A copy of the service document is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, New England Region, Attn: Rules Docket No. 87-ANE-21, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Melvin Taylor, Chicago Aircraft Certification Office, Propulsion Branch, ACE-140C, Federal Aviation Administration, 2300 East Devon Avenue, Room 232, Des Plaines Illinois 60018; telephone (312) 694-7134.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-5658 (52 FR 26948, July 23, 1987), AD 87-15-05, which currently requires repetitive blade inspections of Hartzell Model HC-B4TN-5( )L/LT10574(B) propellers installed on Dornier Model 228-100 and -200 series airplanes until replacement with redesigned blade Models LT10574A(B) or LT10574A(S)(B) at next propeller overhaul. The FAA has determined that a re-occurrence of

propeller noise may exist with the redesigned blade models required by Amendment 39-5658. Propeller noise is experienced only during landing blade reversal operations. Blade Model LT10574(B) experienced high stresses caused by "reverse flutter" which at times were accompanied by high propeller noise. The noise associated with the redesigned blade models is of a lower order of magnitude and is not as easily repeated. However, the existence of "reverse flutter" remains and may result in mid-blade cracks and possible mid-blade failure with could lead to engine separation from the aircraft. Since this condition is likely to exist or develop on propellers of the same type design, the FAA is amending Amendment 39-5658 to require repetitive checks and inspections of the redesigned Hartzell blade Models LT10574A(B,K) and LT10574A(S)(B,K) installed on Dornier Model 228-100 and -200 series airplanes. It has also been determined that Hartzell blade Model LT10574(K) should have been included in the original AD.

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

Conclusion: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Amendment 39-5658, Airworthiness Directive (AD) 87-15-05, (52 FR 26948), as follows:

a. Revise the affected models statement to read as follows:

Applies to Hartzell Models HC-B4TN-5( )L/LT10574(B,K), LT10574A(B,K), and LT10574A(S)(B,K) propellers installed on Dornier Model 228-100 and -200 series airplanes.

b. Revise Paragraph (a) of the amendment to read as follows:

(a) After the effective date of this amended AD, the following applies:

(1) Following the last flight of each day, except when compliance with Paragraph (a)(2) of this AD is required, visually check the Models LT10574(B,K), LT10574A(B,K), and LT10574A(S)(B,K) blades in accordance with Paragraph a, of Hartzell Service Bulletin (SB) No. 140C, dated September 30, 1987. Blades found to have evidence of cracks must be removed from service, and all blades in the affected propeller assembly must be replaced with Model LT10574A(B,K) or LT10574A(S)(B,K) blades, as applicable, prior to further flight.

Note.—The checks required above may be performed by the pilot and must be recorded in accordance with FAR 43.9 and maintained as required by FAR's 91.173, 121.380, or 135.439.

(2) Following the last flight of the fourth flight day, visually inspect the Models LT10574(B,K), LT10574A(B,K), and LT10574A(S)(B,K) blades in accordance with Paragraph b of Hartzell SB No. 140C, dated September 30, 1987, and thereafter at intervals not to exceed 4 flight days from the last inspection. Blades found to have evidence of cracks must be removed from service, and all blades in the affected propeller assembly must be replaced with Model LT10574A(B,K) or LT10574A(S)(B,K) blades, as applicable, prior to further flight."

c. Revise the first sentence of Paragraph (b) to read as follows:

Within the next 100 hours time in service after the effective date of this amended AD, and at intervals not to exceed 100 hours time in service thereafter, inspect the Model LT10574(B,K), LT10574A(B,K), and LT10574A(S)(B,K) blades in accordance with Paragraph c of Hartzell SB No. 140C, dated September 30, 1987.

d. Replace the phrase "LT10574A(B) or LT10574A(S)(B)" in the last sentence in Paragraph (b) with "LT10574A(B,K) or LT10574A(S)(B,K)".

e. Revise Paragraph (c) to read as follows:

(c) At the next propeller overhaul, replace the Model LT10574(B,K) blades with Model LT10574A(B,K) or Model LT10574A(S)(B,K) blades, as applicable."

Hartzell SB No. 140C, dated September 30, 1987, identified and described in this document is incorporated herein and made part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive, who have not already received this document from the manufacturer, may obtain copies upon request to Hartzell Propeller, Inc., 1800 Covington Avenue, Piqua, Ohio 45356. This document may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket No. 87-ANE-21, weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m.

This amendment becomes effective on December 2, 1987.

This amendment amends Amendment 39-5658, AD 87-15-05, (52 FR 26948).

Issued in Burlington, Massachusetts, on October 26, 1987.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 87-27534 Filed 11-30-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-16]

Removal of Transition Area; Manila, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will remove the transition area at Manila, AR. This amendment is necessary due to the shutdown of the nondirectional radio beacon (NDB) serving the Manila Municipal Airport and the subsequent cancellation of the standard instrument approach procedure (SIAP). The intended effect of this amendment is to release that controlled airspace no longer required for aircraft executing the SIAP to the Manila Municipal Airport, Manila, AR. Coincident with this amendment, the airport status will change from instrument flight rules (IFR) to visual flight rules (VFR).

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and

Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On May 12, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area at Manila, AR (52 FR 19521).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated Janaury 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations removes the transition area at Manila, AR. This amendment is necessary since the NDB has been shutdown due to the age of the equipment and the inability to obtain necessary replacement parts. With the shutdown of the NDB, the existing SIAP has also been canceled, negating the need for a 700-foot transition area. Coincident with this amendment the airport status will change from IFR to VFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Manila, AR [Removed]

Issued in Fort Worth, TX, on November 13, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-27537 Filed 11-30-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-20]

Removal of Transition Area; Danbury, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will remove the transition area at Danbury, TX. This amendment is necessary since all existing standard instrument approach procedures (SIAP) to the Garrett Ranch Airport, Danbury, TX, have been canceled, thus negating the need for a 700-foot transition area. The intended effect of this amendment is to release that controlled airspace no longer required for aircraft executing the SIAP's to the Garrett Ranch Airport. Coincident with this amendment, the airport status will change from instrument flight rules (IFR) to visual flight rules (VFR).

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On May 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area at Danbury, TX (52 FR 20412).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations removes the transition area at Danbury, TX. This amendment is necessary since all SIAP's to the Garrett Ranch Airport, Danbury, TX, have been canceled, thus negating the need for the 700-foot transition area. The effect of this amendment is to release that controlled airspace no longer required for aircraft executing the SIAP's to the Garrett Ranch Airport. Coincident with this amendment the airport status will change from IFR to VFR.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Danbury, TX [Removed]

Issued in Fort Worth, TX, on November 13, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-27536 Filed 11-30-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25451; Amdt. 1361]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporated by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emegency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on November 13, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . .Effective January 14, 1988

Gulf Shores, AL—Jack Edwards, RADAR–1, Amdt. 1
Barrow, AK—Wiley Post-Will Rogers Mem, VOR RWY 24, Amdt. 3
Barrow, AK—Wiley Post-Will Rogers Mem, VOR/DME RWY 24, Orig.
Fairbanks, AK—Fairbanks Intl., LOC BC RWY 1L, Amdt. 14, CANCELLED
Fairbanks, AK—Fairbanks Intl., NDB–A, Amdt. 1, CANCELLED
Fairbanks, AK—Fairbanks Intl., NDB RWY 19R, Amdt. 17
Fairbanks, AK—Fairbanks Intl., ILS RWY 1L, Amdt. 3
Fairbanks, AK—Fairbanks Intl., ILS RWY 19R, Amdt. 20
Fairbanks, AK—Fairbanks Intl., HI–ILS RWY 19R, Amdt. 1
Fairbanks, AK—Fairbanks Intl., RADAR–1, Amdt. 1
Kipnuk, AK—Kipnuk, VOR RWY 15, Amdt. 2
Kipnuk, AK—Kipnuk, VOR RWY 33, Amdt. 2
Mekoryuk, AK—Mekoryuk, NDB RWY 23, Amdt. 1
Mekoryuk, AK—Mekoryuk, NDB/DME–A, Amdt. 2
Redding, CA—Redding Muni, VOR RWY 34, Amdt. 10
Redding, CA—Redding Muni, VOR/DME RWY 34, Amdt. 7, CANCELLED
Redding, CA—Redding Muni, LOC/DME BC RWY 16 Amdt. 5
Redding, CA—Redding Muni, NDB RWY 34, Amdt. 5
Redding, CA—Redding Muni, ILS RWY 34, Amdt. 10
Denver, CO—Centennial, NDB RWY 35R, Amdt. 8
Denver, CO—Centennial, ILS RWY 35R, Amdt. 5
Denver, CO—Centennial, RNAV RWY 28, Amdt. 4
Denver, CO—Jeffco, VOR/DME RWY 29R, Orig.
Denver, CO—Jeffco, ILS RWY 29R, Amdt. 10
Denver, CO—Jeffco, RNAV RWY 29R, Amdt. 9
Denver, CO—Stapleton Intl., LOC/DME RWY 18, Amdt. 1
Denver, CO—Stapleton Intl., LDA/DME RWY 35R, Amdt. 1
Denver, CO—Stapleton Intl., NDB RWY 26L, Amdt. 37
Denver, CO—Stapleton Intl., NDB RWY 26R, Amdt. 7
Denver, CO—Stapleton Intl., ILS/DME–1 RWY 8R, Amdt. 4
Denver, CO—Stapleton Intl., CONVERGING ILS/DME–2 RWY 8R, Amdt. 1
Denver, CO—Stapleton Intl., ILS/DME–1 RWY 17L, Amdt. 5
Denver, CO—Stapleton Intl., CONVERGING ILS/DME–2 RWY 17L, Amdt. 1
Denver, CO—Stapleton Intl., ILS RWY 26L, Amdt. 45
Denver, CO—Stapleton Intl., ILS RWY 35L, Amdt. 27
Denver, CO—Stapleton Intl., ILS RWY 35R, Amdt. 10
Denver, CO—Stapleton Intl., ILS/DME RWY 36, Amdt. 1
Eagle, CO—Eagle County, LDA/DME–A, Amdt. 4
Jacksonville, FL—Jacksonville Intl., LOC BC RWY 31, Amdt. 6
Bogalusa, LA—George R. Carr Memorial Air Fld., VOD/DME–A, Amdt. 3
Bogalusa, LA—George R. Carr Memorial Air Fld., LOC RWY 18, Orig.
Bogalusa, LA—George R. Carr Memorial Air Fld., NDB RWY 18, Amdt. 2
Starkville, MS—George M. Bryan, VOR/DME–A, Amdt. 5
Starkville, MS—George M. Bryan, NDB–C, Amdt. 2
Massena, NY—Massena Intl-Richards Field, RNAV RWY 23, Amdt. 6

. . .Effective January 14, 1988

Greensboro, NC—Greensboro-High Point-Winston Salem Rgnl, RADAR–1, Amdt. 7
Manteo, NC—Dare County Regional, VOR RWY 16, Amdt. 2
Manteo, NC—Dare County Regional, NDB RWY 4, Amdt. 3
Manteo, NC—Dare County Regional, NDB RWY 16, Amdt. 3
Winston Salem, NC—Smith Reynolds, NDB RWY 33, Amdt. 23
Altus, OK—Altus Muni, RADAR–1, Amdt. 1
Clinton, OK—Clinton-Sherman, VOR/DME RWY 35L, Orig., CANCELLED
Bend, OR—Bend Muni, VOR/DME RWY 16, Amdt. 7
Redmond, OR—Roberts Field, VOR–A, Amdt. 4
Redmond, OR—Roberts Field, VOR/DME RWY 22, Amdt. 2
Redmond, OR—Roberts Field, NDB RWY 22, Amdt. 1
Redmond, OR—Roberts Field, ILS RWY 22, Amdt. 1
Jasper, TX—Jasper County Bell Field, NDB–A, Amdt. 3, CANCELLED
Kirbyville, TX—Kirbyville, NDB RWY 13, Amdt. 1, CANCELLED
Pleasanton, TX—PLeasanton Muni, NDB–A, Amdt. 5
Solon Springs, WI—Solon Springs Muni, NDB RWY 19, Orig.

. . .Effective December 17, 1987

Titusville, FL—NASA Shuttle Landing Facility, NDB–A, Orig., CANCELLED
St. Paul, MN—St. Paul Downtown Holman Fld, LOC RWY 30, Amdt. 10, CANCELLED
St. Paul, MN—St. Paul Downtown Holman Fld, LOC RWY 32, Orig.
St. Paul, MN—St. Paul Downtown Holman Fld, NDB RWY 30, Amdt. 5
St. Paul, MN—St. Paul Downtown Holman Fld, MLS RWY 30 (Interim), Amdt. 6, CANCELLED
San Juan, PR—Luis Munoz Marin Intl, ILS RWY 8, Amdt. 15
Quinton, VA—New Kent County, VOR–A, Orig.

. . .Effective November 10, 1987

Kenton, OH—Hardin County, VOR–A, Amdt. 2

. . .Effective November 3, 1987

Baltimore, MD—Baltimore-Washington Intl., VOR/DME RWY 4, Amdt. 1

. . .Effective October 30, 1987

Gulfport, MS—Gulfport-Biloxi Rgnl, ILS RWY 31, Amdt. 1

[FR Doc. 87–27535 Filed 11–30–87; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371 and 374

[Docket No. 71027–7227]

Austria; Exports Under General Licenses G–COM and GCG and Permissive Reexports From Austria to People's Republic of China

AGENCY: Export Administration Commerce.

ACTION: Final rule.

SUMMARY: Because of the improvement in Austrian export control measures, Export Administration is removing the requirement for a validated license for certain exports to Austria and certain reexports from Austria to the People's Republic of China (PRC). Specifically, General Licenses G–COM and GCG are being amended to authorize shipments to Austria and § 374.2 of the Export Administration Regulations is being amended to authorize permissive reexports from Austria to the PRC of commodities described in Advisory Notes for the People's Republic of China or Country Groups Q, W, and Y. This action is part of the Department of Commerce initiatives to remove unnecessary licensing requirements for shipments involving countries cooperating to protect U.S. strategically controlled commodities and technologies. In addition, this action will lessen the administrative burden on U.S. exporters and their foreign customers.

EFFECTIVE DATE: This rule is effective December 1, 1987.

FOR FURTHER INFORMATION CONTACT: Will Fisher, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, Telephone: (202) 377–3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that

Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 371 and 374

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 371 and 374 of the Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR Part 371 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. The authority citation for 15 CFR Part 374 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 371—[AMENDED]

3. Section 371.8 is amended by adding "Austria," immediately before the word "Belgium," in paragraph (b) and revising paragraph (a) to read as follows:

§ 371.8 General License G–COM; certain shipments to cooperating countries.

(a) *Scope.* A general license designated G–COM is established, authorizing exports to the COCOM participating countries and Austria, Finland, Singapore, Sweden, and Switzerland, for use or consumption therein, of commodities that the United States may approve for export to controlled countries with only notification to the COCOM governments.

* * * * *

4. Section 371.14 is amended by revising the second sentence in paragraph (b) to read as follows:

§ 371.14 General License GCG; shipments to agencies of cooperating governments.

* * * * *

(b) *Definition of a Cooperating Government Agency.* * * * Cooperating governments are the national governments of the COCOM participating countries and the national governments of Austria, Singapore, Sweden, and Switzerland.

* * * * *

PART 374—[AMENDED]

§ 374.2 [Amended]

5. In § 374.2, paragraph (j) is amended by revising the words "Switzerland or a COCOM country" to read "a COCOM participating country, Austria, or Switzerland,".

Dated: November 25, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–27556 Filed 11–30–87; 8:45 am]

BILLING CODE 3510–DT–M

FEDERAL TRADE COMMISSION

16 CFR Part 6

Enforcement of Nondiscrimination on Basis of Handicap in Federal Trade Commission Programs

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This regulation requires that the Federal Trade Commission ("the Commission") operate all of its programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps and establishes a complaint mechanism for resolving allegations of discrimination. It is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Jerome A. Tintle, Office of General Counsel, Federal Trade Commission, Washington, DC 20580, [202–326–2463]; TDD (202) 326–2502.

An audio tape of this regulation will be made available to any person with visual impairment upon request. He or she may contact the Office of the Secretary, Federal Trade Commission, Washington, DC 20580 ((202) 326–2515; TDD (202) 326–2502).

SUPPLEMENT INFORMATION:

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Commission. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Section 119, Pub. L. 95–602, 92 Stat. 2982), and the Rehabilitation Act Amendments of 1966 (Pub. L. 99–506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after*

the date on which such regulation is so submitted to such committees.

(29 U.S.C. 794 (1978 amendment italicized).)

On August 12, 1985, the Commission published for comment a notice of proposed rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, as it applies to programs and activities conducted by the Commission. 50 FR 32443. The NPRM was modeled after a prototype regulation developed by the Department of Justice (the Department) for the guidance of all Executive agencies. It was also based upon the Department's own proposed regulation (48 FR 55996) and final regulation (28 CFR Part 39). The period for commenting on the NPRM expired on December 10, 1985, with three comments having been filed.

Section 504 requires that regulations that apply to the programs and activities of Federal Executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been submitted. The Commission is submitting this regulation to the appropriate committees of Congress pursuant to this requirement. The regulation will become effective on February 1, 1988.

The substantive nondiscrimination obligations of the Commission, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however some language differences between this final rule and the Federal government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F. 2d 490 (1st Cir. 1983).

Some commenters questioned the use of *Davis* as justification for the inclusion of the new provisions in the federally conducted regulation. They noted that these changes had not been included in the Department of Justice regulation, issued subsequent to the *Davis* decision, implementing section 504 in programs receiving Federal financial assistance. This regulation, however, was issued prior to the D.C. Circuit's decision in *APTA*. In *APTA*, the Department had argued a position similar to that advocated by the commenters. Judge Abner Mikva's decision in *APTA* clearly rejected the Department's position in that case. Other circuit court decisions followed the *APTA* interpretation of *Davis*. Since these decisions, the Department has interpreted its section 504 regulation for federally assisted programs in a manner consistent with the language of this final rule. The Commission believes that judicial interpretation of section 504 compels it to incorporate the new language in its federally conducted regulation.

This interpretation is supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulation implementing section 504 for federally assisted programs, as interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 in *Davis*, by lower court cases interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the Commission believes that there are no significant differences between this final rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice under Executive Order 12250 (45 FR 72995), 3 CFR, 1980 Comp., p. 298) and by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

Because the Commission is expressly excluded from the coverage of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and because this regulation is not a major rule within the meaning of the Executive Order, a regulatory impact analysis has not been prepared. The regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis and Response to Comments

Section 6.101 Purpose

Section 6.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service. The section, as initially published in the **Federal Register**, included an additional sentence stating:

> The Commission intends to comply fully with section 504 insofar as compliance is within the Commission's authority and does not interfere with the Commission's law enforcement responsibilities in a manner not intended by section 504.

One comment questions the Commission's inclusion of this sentence. The comment contends that the Commission has the authority to make alterations or additions to the buildings it occupies and that the sentence fails to provide adequate notice as to how the Commission intends to apply section 504 consistently with its law enforcement obligations. As the Commission explained in the NPRM, the Commission's compliance with section 504 is necessarily limited to such actions as are within its authority, citing as an example the fact that the General Services Administration (GSA) has exclusive authority to make alterations

or additions to the buildings and facilities occupied by the Commission. The Commission disagrees with the view expressed in the comment that the Commission has the authority to make structural changes to the buildings that it occupies. The Commission recognizes its responsibility to identify any structural modifications that are necessary to comply with section 504 and to work closely with GSA to ensure that such changes are made; however, it cannot commit itself by regulation to make such changes on its own. Nevertheless, since the language of the regulation is not necessary to establish this point, the sentence has been deleted as surplusage. Likewise, it is self-evident that the regulation is to be enforced in a manner consistent with the enabling legislation, and there is thus no need for the regulation to state so specifically.

Section 6.102 Application

The regulation applies to all programs or activities conducted by the Commission except those that are conducted outside the United States that do not involve handicapped persons in the United States. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing Commission operations and those directly administered by the Commission for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walkins, or interviews) and the public's use of the Commission's facilities. Activities in the second category include programs that provide Federal services or benefits. No comments were received on this section.

Section 6.103 Definitions

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the Commission's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 6.160(a)(1), they may also be necessary to meet other requirements of the regulation. Comments on the definition of "auxiliary aids" are discussed in connection with § 6.160(a)(1).

"Commission." In order to conform this regulation with other Commission rules and regulations, the Commission has determined to change the word "agency" wherever it appeared in the proposed regulations to the word "Commission." Accordingly, the word "Commission" as used in this regulation means the "Federal Trade Commission."

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the Commission to investigate the complaint. The definition is necessary because the 180 day period for the Commission's investigation (*see* § 6.170(g)) begins when the Commission receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted.

The comments objected to the omission of the phrase "or interest in such property" from the definition of "facility." As explained in the NPRM, the term "facility," as used in this regulation, refers to structures, and does not include intangible property rights. The definition, therefore, has no effect on the scope of coverage of programs, including those conducted in facilities not included in the definition. The phrase has been omitted because the requirement that facilities be accessible would be a logical absurdity if applied to a lease, life estate, mortgage, or other intangible property interest. The regulation applies to all programs and activities conducted by the Commission regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the Commission. The term "facility" is used in §§ 6.149, 6.150, and 6.170(f).

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) of the definition deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition is based on the Supreme Court's *Davis* decision.

In *Davis*, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

The Commission has incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the Commission. The Commission is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the Commission does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it

requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The commenters objected to this revised definition for a variety of reasons. They asserted that the Commission incorrectly used *Davis* as the justification for explaining the differences between the federally assisted and the federally conducted regulations even though the Supreme Court expressly upheld the validity of the federally assisted regulations in *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624 (1984) (*Conrail*). This argument misunderstands the Court's actions in *Conrail*. In that case the Court ruled on a series of issues, the most important of which was under what circumstances section 504 applied to employment discrimination by recipients. The Court did not concern itself either directly or indirectly with the definition of "qualified handicapped person" or whether section 504 included limitations based on "undue financial and administrative burdens."

One comment argued that provision of a sign language interpreter or relocation of a service could be considered a "fundamental alteration" in the nature of a program or activity. The Commission believes that the specific provisions of the regulation on program accessibility and communications clearly establish that, absent some unusual circumstances, such an interpretation would be incorrect.

The commenters asserted that the definition would have the effect of placing on the individual with handicaps the burden of proving that he or she is qualified. The definition, however, makes clear that the Commission has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the Commission must follow the procedures established in §§ 6.150(a)(2) and 6.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the Chairman or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the Chairman or his or her designee determines that an action would result in a fundamental alteration, options must be considered that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

The commenters argued that the definition of "qualified handicapped person" places individuals with handicaps in a "Catch-22" situation: because only qualified individuals with handicaps are protected by the statute, a determination that a person is not qualified would make enforcement remedies unavailable to that person. This concern is misplaced. If the Commission determined that an individual with handicaps was not "qualified," the person could use the procedures established by § 6.170 to challenge that determination, just as he or she could challenge any other decision by the Commission that he or she believed to be discriminatory.

The commenters asserted that the definition of "qualified handicapped person" confused what should be two separate inquiries: whether a person meets essential eligibility requirements and, if so, whether accommodation is required. They argued that the reference to "fundamental alteration" in the definition focuses attention on accommodations rather than on abilities of an individual with handicaps. The Supreme Court in *Davis*, however, developed its "fundamental alteration" language in a decision that was determining the nature and scope of what constitutes a qualified handicapped person. The Commission continues to believe that the concept of "qualified individual with handicaps" properly encompasses both the notion of "essential eligibility requirements" and the notion of program modifications that might fundamentally alter a program.

The commenters argued that our analysis of *Davis* was inappropriate because *Davis* was decided on the basis of individual facts unique to that case or because *Davis* involved federally assisted and not federally conducted programs. While cases are decided on the basis of specific factual situations, courts, especially the Supreme Court, develop general principles of law for use in analyzing facts. The *Davis* decision was the Supreme Court's first comprehensive view of section 504, a major new civil rights statute. The *Davis* holding, that a person who cannot achieve the purpose of a program without fundamental changes in its nature is not a "qualified handicapped person," is a general principle, a statement by the Court on how it views section 504. It is therefore necessary to reflect it in the Commission's regulation.

For programs or activities that do not fall under the first paragraph, paragraph (2) of the definition adopts the existing definition in the coordination regulation of "qualified handicapped person" with respect to services for programs receiving Federal financial assistance (28 CFR 41.32(b)). Under this part of the definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (3) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 6.140. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the Commission and not to programs or activities to which it provides Federal financial assistance.

Section 6.110 Self-evaluation

This section requires that the Commission conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has deomonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

The final rule uses the same provision adopted by the Department of Justice in its final rule implementing section 504 for its federally conducted programs. 28 CFR 39.110. The Department determined that this regulatory language was appropriate after it had analyzed the Federal Advisory Committee Act (5 U.S.C. app.), Executive Order 12024, and 41 CFR Part 101–6, the regulation of the General Services Administration implementing the Act.

This final rule provides that the Commission shall provide an opportunity for interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process and development of transition plans by

submitting comments (both oral and written).

One comment suggested that the Commission's procedures for self-evaluation include (1) an assurance that the effects of a discriminatory policy will be eliminated, (2) a transition plan for compliance, and (3) specific modification requirements including those for persons with impaired vision or hearing. The Commission rejects these suggested additions to the regulations as unnecessary.

Section 6.111 Notice

Section 6.111 requires the Commission to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Commission's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

The comments suggested that the regulation specifically require that notice information "effectively" apprise persons of their rights and protection against discrimination and that notification of Commission policy regarding nondiscrimination also be distributed in recruitment materials as well as general information. The Commission has determined that the regulation as proposed amply satisfies the Commission's notice obligations and has determined not to adopt the suggestions.

Section 6.130 General prohibitions against discrimination

Section 6.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 6.130 establish the general principles for analyzing whether any particular action of the Commission violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the Commission violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 6.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The Commission may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 6.149–6.151) and communications (§ 6.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the Commission administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the Commission to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the Commission's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the Commission from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the Commission from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the Commission from utilizing criteria or methods of administration that deny individuals with handicaps access to the Commission's programs or activities. The phrase "criteria or methods of administration" refers to official written Commission policies and to the actual practices of the Commission. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 6.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the Commission. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the Commission, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

One comment objected to the proposed regulation's failure to include a paragraph corresponding to one that appears in the regulations for federally assisted programs prohibiting a recipient from providing significant assistance to an agency, organization, or person that discriminates. The inclusion of such a provision in a regulation applying only to federally conducted programs or activities, as opposed to federally assisted programs, clearly seems inappropriate.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the Commission must administer programs and activities in the most integrated setting appropriate

to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 6.140 Employment

Section 6.140 prohibits discrimination on the basis of handicap in employment by the Commission. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness* v. *United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 622 F.2d at 304. Accordingly, § 6.140 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. In addition to this section, § 6.170(b) specifies that the Commission will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. While the Commission's regulation could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the Commission has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Except for editorial changes, the section remains unchanged from the version published in the NPRM.

Section 6.149 Program accessibility: Discrimination prohibited

Section 6.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 6.150 and 6.151. No comments were received on this section. Except for editorial changes, it remains unchanged from the version published in the NPRM.

Section 6.150 Program accessibility: Existing facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 6.150 requires that each Commission program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the Commission is not required to make each of its existing facilities accessible (§ 6.150(a)(1)). However, § 6.150, unlike 28 CFR 41.57, places explicit limits on the Commission's obligation to ensure program accessibility (§ 6.150(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the Commission's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the Commission is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 6.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See e.g.*, *Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981).

Paragraphs (a)(2) and 6.160(d) are also supported by the Supreme Court's decision in *Alexander* v. *Choate* 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it has an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers", *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration[s] in the nature of a program' ". *Id.* at n.20 (citations omitted).

Alexander supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation. This provision is therefore unchanged from the proposed rule.

Some commenters asserted that the holding in *Davis* was that the plaintiff was not a qualified handicapped person and that the subsequent reference to "undue financial and administrative burdens" is mere *dicta*. This view overlooks the interpretations of *Davis* provided by the Federal circuit court cases mentioned above. The *APTA* and *Dopico* decisions make it clear that financial burdens can limit the obligation to comply with section 504. *See also New Mexico Association for Retarded Citizens* v. *New Mexico*, 678 F.2d 847 (10th Cir. 1982). In addition, the Court in *Alexander* held that the

"administrative costs" of subjecting any action affecting Medicaid recipients to a detailed analysis of its effects on handicapped people "would be well beyond the accommodations that are required under *Davis*." 469 U.S. at 308.

One comment included a lengthy analysis opposing the undue burdens defense. This comment was premised on the assumption that the proposed regulation was substantively inconsistent with the regulations for federally assisted programs. This assumption is incorrect. Judicial interpretations have established that neither section 504 nor the regulations for federally assisted programs establish an unlimited obligation to modify programs or activities to accommodate individuals with handicaps.

This comment also argued that *APTA* is no longer good law, in view of the Supreme Court's decision in *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624 (1984) (*Conrail*), in which the Court said that Congress intended, through the 1978 amendments to the statute, to codify the HEW regulation. Another commenter also argued that *Conrail* prohibits departures from the language of the federally assisted regulation. The *Conrail* decision addressed only the question of employment coverage under the statute and cannot be read to mean that Congress "codified" other parts of the regulation. Furthermore, the undue burdens defense is not inconsistent with the HEW regulation; in fact, the employment provisions of the HEW regulation—those addressed in *Conrail*—do include an "undue hardship" defense. This position is confirmed by the Supreme Court's decision in *Alexander*. There the Court referred to its previous recognition in *Conrail* of the regulation as "an important source of guidance on the meaning of section 504," 469 U.S. at 304, n.24, and at the same time, as discussed above, emphasized that section 504 does not mandate extensive costs and administrative burdens.

The Commission has carefully considered the comments on the process that it should follow in determining whether a program modification would result in undue financial and administrative burdens. We are adopting the proposed rule's procedural requirements for the application of the "fundamental alteration" and "undue financial and administrative burdens" language, and we intend to be guided by six principles in applying those procedures.

First, we explicitly acknowledge that, in most cases, making a Commission program accessible will likely not result in undue burdens. Second, the burden of proving that the accommodation request will result in a fundamental alteration or undue burdens is placed squarely on the Commission, not on the handicapped person. Third, in determining whether financial and administrative burdens are undue, we will consider all Commission resources available for use in the funding and operation of the conducted program. Fourth, the "fundamental alteration"/"undue burdens" decision is to be made by the Chairman or his or her designee and must be accompanied by a written statement of reasons for reaching such a conclusion. Fifth, if a disabled person disagrees with the Commission's finding, he or she can file a complaint under the complaint procedures established by § 6.170. Finally, even if there is a determination that making a program accessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens, the Commission must still take action, short of that outer limit, that will open participation in the Commission's program to disabled persons.

The commenters objected to the provision that the "undue burdens" decision would be based on consideration of "all agency resources available for use in the funding and operation of the conducted program," arguing that it should be based on the resources of the agency as a whole. They argued that this formulation was required because all agency resources come from taxpayers' monies and should not be used to support discrimination. We believe that the Commission's entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Parts of the Commission's budget may be earmarked for specific purposes and are simply not available for use in making the Commission's programs accessible to disabled persons.

One commenter said that the term "undue hardship" used in regulations for federally assisted programs is more specific and less discriminatory than the term "undue burdens." The term "undue hardship" is a term of art used in connection with employment. The term "undue burdens" is taken from the Supreme Court's opinion in *Davis* and is appropriately included in this regulation.

The commenters argued that section 504 creates an absolute right to access, and that cost cannot limit this right, although it may be a factor in determining time frames for compliance. Section 504 does not create an absolute right to access. The Supreme Court stated in *Davis* that recipients need not undertake modifications to their programs to meet the requirements of section 504 that would result in "undue financial and administrative burdens." This understanding of section 504 and its implementing regulations for federally assisted programs is shared by the lower Federal courts, which have routinely applied the "undue burdens" limitation to accessibility issues. Congress suggested no different interpretation of section 504 when applying it to federally conducted programs. Spreading the cost of compliance over a period of time is, however, one way of avoiding undue financial and administrative burdens, and the Commission will consider that as an option whenever it considers asserting that defense.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the Commission shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the Commission's program accessible. The Commission may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the Commission must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 6.151 Program accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 6.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or

altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). It is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

This regulation does not require that buildings leased after the effective date of the regulation meet the new construction standards of § 6.151 rather than the program accessibility standard for existing facilities in § 6.150. Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the Commission believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose* v. *United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The Commission may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 6.160 Communications

Section 6.160 requires the Commission to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 6.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and to enjoy the benefits of, the Commission's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the Commission (§ 6.160(a)(1)(ii)). The Commission shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 6.160(d). That paragraph limits the obligation of the Commission to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § 6.150(a)(2)). Unless not required by § 6.160(d), the Commission shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 6.150(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the Commission's obligation to comply with § 6.160.

One comment argued that the communications section should require that communications for handicapped people be "equal" to those for nonhandicapped people, not merely "effective." The regulation requires the Commission to provide auxiliary aids to ensure that individuals with handicaps have "an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Commission." Where the form of communication is different for individuals with handicaps than for nonhandicapped people (*e.g.*, oral instead of written for blind people, sign language instead of speech for deaf people) the effectiveness of the communication is the only appropriate measurement of equality of treatment.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the Commission intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or to benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the Commission's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The Commission shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the Commission. Auxilliary aids must be afforded where necessary to ensure effective communication at the proceedings.

If sign language interpreters are necessary, the Commission may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Commission need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. (§ 6.160(a)(1)(ii)). For example, the Commission need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly the regulation does not require the Commission to provide wheelchairs to persons with mobility impairments.

The comments suggested that the Commission's language in § 6.160(a)(1)(ii), which states that the Commission need not provide individually prescribed devices or readers for personal use or study, be modified to state that such devices are not required for "nonprogram material." This suggestion has not been adopted because it is less clear than the existing formulation, which is intended to distinguish between communications that are necessary to obtain the benefits of the Federal programs and those that are not, and which parallels the requirements of the Federal Government's section 504 regulations for federally assisted programs. For example, a federally operated library would have to ensure effective communication between its librarian and a patron, but not between the patron and a friend who had accompanied him or her to the library.

The comments suggested that the definition of auxiliary aids should include attendant services that may be needed to aid disabled persons to travel to meetings. They also recommended that in some cases attendant services may be an appropriate auxiliary aid to achieve program accessibility. The Commission has not adopted the approach recommended by these comments. To the extent that the services of an attendant are not directly related to a federally conducted program or activity, it would be inappropriate to require them at Federal expense. For example, the services of a sign language interpreter make a

workshop as available to any deaf participant as it is to other participants. The need for services of interpreters arises directly out of the presentation of information in a form that can be understood by hearing persons. However, the Commission views the services of an attendant for a disabled person as generally personal in nature and not directly related to the federally conducted program.

A different conclusion, however, might be reached for Federal employees or other persons traveling for the Commission. Where a disabled person who is unable to travel without an attendant is required to perform official travel, the travel expenses of an attendant, including per diem and transportation expenses, may be paid by the Commission. See 5 U.S.C. 3102(d)(1982).

The Commission has not adopted a suggestion by one commenter that a provision be added to this section requiring the Commission to make efforts to provide captioning on training films and video tapes. Such a provision would limit the Commission's flexibility in selecting other, equally suitable and possibly less expensive, methods for accommodating hearing-impaired persons as the need arises.

We have also declined to follow a commenter's suggestion that a provision be added to this section that would require the Commission to take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the agency's programs or activities. Such a provision would be redundant with the broader and more detailed requirements of § 6.111, previously discussed.

Paragraph (b) requires the Commission to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the Commission to provide signs at inaccessible facilities that direct users to locations with information about accessible facilities.

Section 6.170 Compliance procedures

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the Commission will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The Commission has amended paragraphs (c) through (k) to take into consideration suggestions made by the commenters and to delegate authority under the section to the Commission's Director of Equal Employment Opportunity ("EEO Director"). Thus,

—Paragraph (c) designates the EEO Director as the official responsible for the implementation and operation of the section.

—Paragraph (d) permits the filing with the EEO Director of a complaint by a person in his individual capacity or as a representative of a class of which he or she is a member or by an authorized representative of such person; it requires that the complaint be filed within 180 days of the alleged act of discrimination unless the EEO Director extends the time period for good cause; and it requires that the complaint be addressed to the EEO Director.

—Paragraph (e) authorizes the EEO Director to determine whether the Commission has jurisdiction over a complaint and, if the EEO Director determines that the Commission does not have jurisdiction over a complaint, he or she shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government.[1]

—Paragraph (f) requires the EEO Director to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by handicapped persons.

—Paragraph (g) authorizes the EEO Director to determine whether a complaint is complete, and if he or she determines that a complaint is incomplete, to so notify the complainant, and to dismiss the complaint without prejudice if the complainant fails to complete the complaint within 30 days of the date of the notice.

—Paragraph (h) requires the EEO Director, within 180 days of his or her receipt of a complete complaint, to notify the complainant by letter of the EEO Director's findings of fact and conclusions of law, description of a remedy for each violation found, and notice of the right to appeal.

—Paragraph (i) permits an appeal to the Commission's General Counsel from a determination by the EEO Director under paragraph (h). The paragraph further provides that the appeal must be filed within 90 days of the complainant's receipt of the letter required by paragraph (h) unless the General Counsel extends the time period for good cause, and it specifies what the appeal must contain.

—Paragraph (j) requires the General Counsel to notify the complainant of the results of the appeal within 60 days of the receipt of the appeal unless the General Counsel determines that additional information is needed from the complainant, in which event the 60-day period will begin to run from the date of receipt of the additional information. The paragraph also confers upon the General Counsel discretionary authority to refer the appeal to the Commission for final determination provided that the Commission's final determination is made within the 60-day time period specified by the paragraph.

—Paragraph (k) of the proposed regulation would have authorized the Assistant Attorney General, Civil Rights Division, United States Department of Justice, to grant extensions of time in which to reach a determination on a complaint or appeal. Since this proposed oversight is not required by statute, this regulation authorizes the Chairman to determine such grants of extensions of time.

—Paragraph (l) permits the Commission to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the Commission to make a final determination of compliance or noncompliance may not be delegated.

One commenter requested the addition of a provision whereby the Commission would award attorneys fee to complainants. Another commenter suggested that the Equal Access to Justice Act (5 U.S.C. 504) might provide for the award of fees. Nothing contained in title V of the Rehabilitation Act provides for the agency award of attorneys fees in administrative proceedings other than those involving Federal employment. Nor does the EAJA and the Commission's implementing regulations at 16 CFR Part 3 provide for such awards in hearings conducted under § 6.170. We have therefore included no attorneys fee provision in the regulations.

We have also declined to follow the suggestion of one commenter that the regulation be clarified to state that the existence of the Commission's internal

[1] One commenter objected to our proposed regulation's limiting the Commission's referral obligation to making "reasonable efforts" to refer a complaint to the appropriate governmental entity. The commenter suggested that the rule be amended to impose an absolute obligation. The Commission declines to adopt this suggestion since some complaints may not be referrable, *e.g.*, a complaint over which no Federal agency has jurisdiction or that lacks sufficient information to enable the Commission to identify the appropriate agency.

compliance procedures does not curtail a complainant's right to seek direct judicial relief or to obtain *de novo* review of Commission action under the section. Those issues are appropriate for the courts to decide.

List of Subjects in 16 CFR Part 6

Blind, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

For the reasons set forth in the preamble, Chapter I of Title 16 of the Code of Federal Regulations is amended as follows:

A new Part 6 is added to read as follows:

PART 6—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL TRADE COMMISSION

Sec.

6.101 Purpose.
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6.161–6.169 [Reserved]
6.170 Compliance procedures.
6.171–6.999 [Reserved]

Authority: 29 U.S.C. 794.

§ 6.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 6.102 Application.

This part applies to all programs or activities conducted by the Commission except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 6.103 Definitions.

For purposes of this part, the term—

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and to enjoy the benefits of, programs or activities conducted by the Commission. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Commission" means the Federal Trade Commission.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the Commission's alleged discriminatory action in sufficient detail to inform the Commission of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Commission as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Commission as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any Commission program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Commission can demonstrate would result in a fundamental alteration in its nature; and

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702 (f), which is made applicable to this part by § 6.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955) and the Rehabilitation Act

Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 6.104-6.109 [Reserved]

§ 6.110 Self-evaluation.

(a) The Commission shall, by February 1, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Commission shall proceed to make the necessary modifications.

(b) The Commission shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Commission shall, for at least three years following completion of the self-evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 6.111 Notice.

The Commission shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Commission, and make such information available to them in such manner as the Chairman or his or her designee finds necessary to apprise such persons of the protections against discrimination assured to them by section 504 and this regulation.

§§ 6.112-6.129 [Reserved]

§ 6.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

(b)(1) The Commission, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Commission may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Commission may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Commission may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Commission; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Commission, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Commission shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 6.131-6.139 [Reserved]

§ 6.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Commission. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 6.141-6.148 [Reserved]

§ 6.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 6.150, no qualified individuals with handicaps shall, because the Commission's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

§ 6.150 Program accessibility: Existing facilities.

(a) *General.* The Commission shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Commission to make each of its existing facilities accessible to and usable by individuals with handicaps, or

(2) Require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the

proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with § 6.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chairman or his or her designee after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens, but would, nevertheless, ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Commission may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Commission is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Commission, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Commission shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Commission shall comply with the obligations established under this section by April 1, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by February 1, 1991, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Commission shall develop, by August 1, 1988, a transition plan setting forth the steps necessary to complete such changes. The Commission shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Commission's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 6.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 6.152–6.159 [Reserved]

§ 6.160 Communications.

(a) The Commission shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Commission shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Commission.

(i) In determining what type of auxiliary aid is necessary, the Commission shall give primary consideration to the requests of the individual with handicaps.

(ii) The Commission need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Commission communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's), or equally effective telecommunication systems shall be used.

(b) The Commission shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Commission shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity, or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with § 6.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chairman or his or her designee after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 6.161–6.169 [Reserved]

§ 6.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Commission.

(b) The Commission shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section is vested in the Director of Equal Employment Opportunity.

(d) (1) A complete complaint under this section may be filed by any person who believes that he or she or any specific class of persons of which he or she is a member has been subjected to discrimination prohibited by this part. The complaint may also be filed by an authorized representative of any such person.

(2) The complaint must be filed within 180 days of the alleged act of discrimination unless the Director of Equal Employment Opportunity extends the time period for good cause.

(3) The complaint must be addressed to the Director of Equal Employment Opportunity, Federal Trade Commission, 6th and Pennsylvania Ave. NW., Washington, DC 20580.

(e) If the Director of Equal Employment Opportunity receives a complaint over which the Commission does not have jurisdiction, he or she shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The Director of Equal Employment Opportunity shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) is not readily accessible to and usable by individuals with handicaps.

(g) (1) The Director of Equal Employment Opportunity shall accept and investigate a complete complaint that is filed in accordance with paragraph (d) of this section and over which the Commission has jurisdiction.

(2) If the Director of Equal Employment Opportunity receives a complaint that is not complete (see § 6.103), he or she shall, within 30 days thereafter, notify the complainant that additional information is needed. If the complainant fails to complete the complaint within 30 days of the date of the Director's notice, the Director of Equal Employment Opportunity may dismiss the complaint without prejudice.

(h) Within 180 days of the receipt of a complete complaint over which the Commission has jurisdiction, the Director of Equal Employment Opportunity shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal to the Commission's General Counsel.

(i)(1) An appeal under this section must be filed within 90 days of the complainant's receipt of the letter under paragraph (h) of this section unless the General Counsel extends the time period for good cause.

(2) The appeal must be addressed to the General Counsel, Federal Trade Commission, 6th and Pennsylvania Ave. NW., Washington, DC 20580.

(3) The appeal shall specify the questions raised by the appeal and the arguments on the points of fact and law relied upon in support of the position taken on each question; and it shall include copies of the complaint filed under paragraph (d) of this section and the letter by the Director of Equal Employment Opportunity under paragraph (h) of this section as well as any other material relied upon in support of the appeal.

(j) The General Counsel shall notify the complainant of the results of the appeal within 60 days of the receipt of the appeal. If the General Counsel determines that additional information is needed from the complainant, the General Counsel shall have 60 days from the date of receipt of the additional information to make a final determination on the appeal. The General Counsel may submit the appeal to the Commission for final determination provided that any final determination of the appeal is made by the Commission within the 60-day period specified by this paragraph.

(k) The time limits specified by paragraphs (h) and (j) of this section may be extended by the Chairman for good cause.

(l) The Commission may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 6.171–6.999 [Reserved]

(15 U.S.C. 46 (g).)

Emily H. Rock,

Secretary.

[FR Doc. 87–27523 Filed 11–30–87; 8:45 am]

BILLING CODE 6750–01–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1015

Freedom of Information Act Regulations; Congressional Requests Interim Amendment With Request for Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Interim amendment with request for comment.

SUMMARY: The Commission's Freedom of Information Act regulations direct that records be disclosed to Congress when requested by the chairman of a committee or subcommittee acting pursuant to committee business and having appropriate jurisdiction. To give ranking minority members the same access to Commission information as the chairmen, the Commission is amending this regulatory provision to make it applicable to requests from ranking minority members of such committees and subcommittees.[1]

DATES: Comments on the interim amendment are due no later than December 31, 1987. The amendment will become effective, as an interim measure, on December 1, 1987. As a final amendment, it is proposed to become effective immediately upon its publication in final form.

ADDRESSES: Comments should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Alan Shakin, Assistant General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6980.

SUPPLEMENTARY INFORMATION: The Commission's existing Freedom of Information Act (FOIA) regulations contain the following provision: "All records of the Commission shall be disclosed to Congress upon a request made by the chairman of a committee or subcommittee of Congress acting pursuant to committee business and having jurisdiction over [the] matter about which information is requested." 16 CFR 1015.12(a).

This regulatory provision is based on section 6(a)(7) of the Consumer Product Safety Act: "Nothing in this Act shall authorize the withholding of information by the Commission or any officer or

[1] The Commission voted unanimously (3–0) to issue this Federal Register document. Chairman Scanlon has written a statement which is available from the Office of the Secretary.

employee under its control from the duly authorized committees or subcommittees of the Congress, and the provisions of paragraphs (2) through (6) [of section 6(a)] shall not apply to such disclosures, except that the Commission shall immediately notify the manufacturer or private labeler of any such request for information designated as confidential by the manufacturer or private labeler." 15 U.S.C. 2055(a)(7).

The Commission believes that ranking minority members of (sub)committees should have the same access to Commission information as the chairmen of those (sub)committees. Therefore, the Commission is amending its regulation to make this point clear. The statute refers only to duly authorized committees and subcommittees, and does not specify that a request for information must be made by their chairman.

The Commission is seeking public comment on the interim amendment as a matter of policy. Under the Administrative Procedure Act, notice and comment is not required for the issuance or amendment of interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. 5 U.S.C. 553(b). The Commission is providing a comment period of 30 days and will make the final amendment effective upon its publication in the **Federal Register** in final form. The amendment is being made effective as interim immediately.

In addition, please note:

1. For clarification, the word "the" is being added between the words "over" and "matter."

2. The interim amendment is not a Commission action within the categories listed at 16 CFR 1021.5(b) having a potential for producing environmental effects. Therefore, neither an environmental assessment nor an environmental impact statement is required.

3. Because the interim amendment would only affect Members of Congress, the Commission certifies that it, if issued in final form, would not have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act. 5 U.S.C. 603(3).

Written comments on the interim amendment should be submitted, preferably with four copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Comments are due on December 31, 1987, but late comments will be considered to the extent practicable. Received comments may be seen in the Office of the Secretary, during normal business hours, in room 520, 5401 Westbard Avenue, Bethesda, Maryland.

List of Subjects in 16 CFR Part 1015

Freedom of Information, Records.

Pursuant to 15 U.S.C. 2051 *et seq.*, the Commission hereby amends 16 CFR Part 1015 as follows:

PART 1015—PROCEDURES FOR DISCLOSURE OR PRODUCTION OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for Part 1015 continues to read as follows:

Authority: 15 U.S.C. 2051, 15 U.S.C. 1261, 15 U.S.C. 1471, 15 U.S.C. 1211, 15 U.S.C. 1191, 5 U.S.C. 552.

2. Section 1015.12 is amended by revising paragraph (a) to read as follows:

§ 1015.12 Disclosure to Congress.

(a) All records of the Commission shall be disclosed to Congress upon a request made by the chairman or ranking minority member of a committee or subcommittee of Congress acting pursuant to committee business and having jurisdiction over the matter about which information is requested.

* * * * *

Dated: November 25, 1987

Sheldon Butts,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 87-27522 Filed 11-30-87; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 8164]

Income tax; Submission of Certain Withholding Exemption Certificates and Entitlement to Additional Withholding Exemption

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 3402(f) that relate to the submission of withholding exemption certificates when the total number of withholding exemptions claimed on the certificate exceeds 10, and to the requirements that an employee must meet to be entitled to the additional withholding exemption in respect of the standard deduction. The final rules modify the withholding rules as appropriate to take into account changes made by the Tax Reform Act of 1986.

EFFECTIVE DATE: These regulations are effective with respect to Forms W-4 received after November 30, 1986.

FOR FURTHER INFORMATION CONTACT: Laura Ann M. Lauritzen of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3459, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1986, the **Federal Register** published temporary regulations (51 FR 45107) and a cross-referenced notice (51 FR 45132) amending the Income Tax Regulations (26 CFR Part 31) under section 3402(f) of the Internal Revenue Code of 1986. The amendments detail the circumstances under which an employer must submit an Employee's Withholding Allowance Certificate and those under which an employee may claim an additional withholding exemption. The Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085) increased the amount of each withholding exemption. It also modified or eliminated a number of deductions and credits which an employee previously could take into account in determining the number of withholding allowances the employee was entitled to claim on the withholding exemption certificate. The Service did not receive any written comments in response to the notice of proposed rulemaking. No public hearing was requested or held. Accordingly, the proposed regulations are adopted as proposed.

Explanation of Provisions

Section 3402(f)(2) of the Code provides that an employee must furnish his or her employer with a withholding exemption certificate claiming a number of withholding exemptions, which may in no event exceed the number to which the employee is entitled. In an attempt to ensure that employees do not claim an excessive number of withholding exemptions, current § 31.3402(f)(2)-1(g) provides that an employer must submit to the Internal Revenue Service a copy of any withholding exemption certificate if the total number of withholding exemptions claimed on the certificate exceeds 14. Since the Tax Reform Act of 1986 increased the amount of each withholding exemption and eliminated or limited a number of the deductions and credits previously used in determining the number of withholding

allowances to which an employee was entitled, in some cases the number of withholding exemptions that an employee is entitled to claim has been reduced. To reflect these changes, these final regulations amend the regulations relating to withholding exemption certificates to require employers to submit to the Service a copy of any Form W–4 or W–4A (Employee's Withholding Allowance Certificate) on which an employee claims more than 10 exemptions.

Section 31.3402(f)(1)–1(e) provides that an employee may claim an additional withholding exemption if certain requirements are met. Since the Tax Reform Act of 1986 replaced the zero bracket allowance with the standard deduction and to ensure that withholding more closely matches tax liabilities, these final regulations amend the regulation relating to this additional withholding exemption to reflect the new law.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. It has been certified that this rule will not have a significant impact on a substantial number of small entities because the economic and any other secondary or incidental impact flows directly from the underlying statute. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these temporary regulations is Laura Ann M. Lauritzen of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 31 is amended as follows:

PART 31—[AMENDED]

Paragraph 1. The authority for Part 31 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 31.3402(f)(1)–1 (e) also issued under 26 U.S.C. 3402 (m). * * *

Par. 2. The authority citation for Part 31 is further amended by removing the following citation: "Section 31.3402(f)(1)–1T also issued under 26 U.S.C. 3402 (m).

Par. 3. Paragraph (e) of § 31.3402 (f)(1)–1 is revised to read as follows:

§ 31.3402 (f)(1)–1 Withholding exemptions.

* * * * *

(e) *Additional withholding exemption to which an employee is entitled in respect of the standard deduction.* After November 30, 1986, an employee is entitled to one additional withholding exemption unless:

(1) The employee is married (as determined under section 143) and the employee's spouse is an employee receiving wages subject to withholding, or

(2) The employee has withholding exemption certificates in effect with respect to more than one employer.

These restrictions do not apply if the combined wages of the employee and the spouse (if any) from other than one employer is less than the amount specified in the instructions to Form W–4 or W–4A (Employee's Withholding Allowance Certificate).

Par. 4. Paragraph (g)(1) of § 31.3402(f)(2)–1 is revised to read as follows:

§ 31.3402 (f)(2)–1 Withholding exemption certificates.

* * * * *

(g) *Submission of certain withholding certificates*—(1) *General rule.* With respect to withholding exemption certificates received after November 30, 1986, an employer shall submit, in accordance with paragraph (g)(3) of this section, a copy of any withholding exemption certificate, together with a copy of any written statement received from the employee in support of the claims made on the certificate, which is received from the employee during the reporting period (even if the certificate is not in effect at the end of the quarter) if the employee is employed by that employer on the last day of the reporting period and if—

(i) The total number of withholding exemptions (within the meaning of section 3402(f)(1) and the regulations thereunder) claimed on the certificate exceeds 10, or

(ii) The certificate indicates that the employee claims a status exempting the employee from withholding, and the exception provided by paragraph (g)(2) of this section does not apply.

* * * * *

§ 31.3402 [Amended]

Par. 5. Section 31.3402 (f) (1)–1T is hereby removed.

Par. 6. Section 31.3402 (f) (2)–1T is hereby removed.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: November 4, 1987.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 87–27575 Filed 11–30–87; 8:45 am]

BILLING CODE 4830–01–M

VETERANS ADMINISTRATION

38 CFR Part 21

Dependents' Education; Effect of 85–15 Percent Ratio Requirement

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The law and the Code of Federal Regulations prohibit the Veterans Administration (VA) from approving new enrollments under many of the education programs which the VA administers when the VA or the educational institution pays all or part of the tuition, fees, or other charges to or for 85 percent or more of the students enrolled. The Code of Federal Regulations includes students receiving benefits under the Dependents' Educational Assistance Program as being subject to this restriction. A review of the Code of Federal Regulations revealed that this restriction is not required by law as to these beneficiaries. Accordingly, the VA lifts the prohibition which exists in 38 CFR 21.4201 for the students eligible to receive benefits under the Departments' Educational Assistance program.

EFFECTIVE DATE: October 30, 1987.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service (225C), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 21709 and 21710 of the **Federal Register** of June 9, 1987, notice was published of the VA's intent to amend 38

CFR 21.4201 to delete the Dependents' Educational Assistance Program from the list of programs affected by the 85–15 percent veteran-nonveteran ratio requirement. Interested people were given 30 days to submit comments, suggestions or objections. The VA received two letters. One letter was from a university. The other was from an educational organization.

One writer wanted the need for the 85–15 percent ratio requirement reexamined with a view towards eliminating 38 CFR 21.4201 entirely. The VA is unable to accept this suggestion.

The 85–15 percent ratio is a requirement of law (38 U.S.C. 1673(d)). The law permits the Administrator of Veterans Affairs to allow waiver of this requirement. 38 CFR 21.4201, besides containing the requirement itself, contains criteria which, if met, will permit waiver of the requirement. As long as this requirement remains in the law the VA must administer it. The agency does not believe it has the authority to eliminate the requirement entirely.

The other writer supported the amendment. Accordingly, the VA is making the proposal final.

The VA has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this proposed amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this amended regulation is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 30, 1987.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

In 38 CFR Part 21, Vocational and Rehabilitation and Education, § 21.4201 is amended by revising the introductory text of paragraph (g)(2) to read as follows:

§ 21.4201 Restrictions on enrollment, percentage of students receiving financial support.

* * * * *

(g) * * *

(2) Except for those enrollments with a beginning date before or the same as the date the school completed the most recent computation, no benefits will be paid either under chapter 106, Title 10, United States Code, or under Chapters 30, 32, 34, or 36, Title 38, United States Code, when that computation establishes that the course—

(Authority: 10 U.S.C. 2136, 38 U.S.C. 1434, 1641, 1673(d); Pub. L. 98–525.)

[FR Doc. 87–27433 Filed 11–30–87; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–3295–5]

Approval and Promulgation of Air Quality Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: The 1982 Ozone and Carbon Monoxide State Implementation Plan (SIP) for the Commonwealth of Massachusetts was approved on November 9, 1983 (48 FR 51480) with the understanding that an update of the point source inventory would be submitted by June 1, 1985. On May 31, and June 7, 1985 and June 30, 1987, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted the emissions inventory update fulfilling the 1982 SIP deficiency.

ADDRESSES: Copies of DEQE's submittal are available for public inspection at the State Air Programs Branch, Environmental Protection Agency, Region I, JFK Federal Building, Room 2311, Boston, Massachusetts 02203, (617) 565–3245.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene, (617) 565–3244; (FTS) 835–3244.

SUPPLEMENTARY INFORMATION: On May 31, and June 7, 1985 and June 30, 1987 the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted an update of their point source inventory. In the November 9, 1983 **Federal Register** (48 FR 51480), EPA approved Massachusetts' point source inventory with the understanding that the State would update the point source inventory by June 1, 1985. The update was required because the three following reporting requirements were missing from the 1982 SIP submittal: A sample VOC emission calculation, a breakdown of total emissions into individual emission points at 122 major facilities, and a complete detailed categorization of 216 miscellaneous point sources into specific processes. The May 31, and June 7, 1985 submittals partially corrected the deficiencies, and the June 30, 1987 submittal completed the required update.

List of Subjects in 40 CFR Part 60

Air pollution, Intergovernmental relations, Ozone.

Dated: November 2, 1987.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 87–27301 Filed 11–30–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[FRL–3296–5]

Florida; Final Authorization of State Hazardous Waste Managment Program

AGENCY: Environmental Protection Agency.

ACTION: Final authorization of State program.

SUMMARY: Florida has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Florida's application and has made a decision, subject to public review and comment, that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Florida's hazardous waste program revisions. Florida's application

for program revision is available for public review and comment.

DATES: Final authorization for Florida shall be effective January 30, 1988, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Florida's program revision application must be received by the close of business December 31, 1987.

ADDRESSES: Copies of Florida's program revision application are available during normal business hours at the following addresses for inspection and copying: Florida Department of Environmental Regulation, Twin Towers Office Building, Room 421, 2600 Blair Stone Road, Tallahassee, Florida 32301, telephone (904) 488–0300; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, Telephone: (202) 382–5926; U.S. EPA Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone: (404) 347–4216.

FOR FURTHER INFORMATION CONTACT: Mr. Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365, Telephone: (404) 347–3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1987, herein after "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State's hazardous waste program are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 124 and 270.

B. Florida.

Florida initially received final authorization of its hazardous waste program on February 12, 1985 (50 FR 3908, January 29, 1985).

On February 27, 1987, Florida submitted a final program revision application for non-HSWA requirements promulgated through June 30, 1985. Today, Florida is seeking approval of its program revision in accordance with 40 CFR 21(b)(3). Florida was placed on a schedule of compliance to obtain program modifications for section 3006(f), Availability of Information, of the HSWA (52 FR 26013 July 10, 1987).

EPA has reviewed Florida's application, and has made an immediate final decision that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Florida. The public may submit written comments on EPA's immediate final decision up until December 31, 1987. Copies of Florida's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Florida's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Florida is today seeking authority to administer the following Federal Requirements promulgated prior to June 30, 1985:

• Biennial Reports.	48 FR 3977	Jan 28, 1983.
• Permit Rules-Settlement Agreement.	48 FR 39622	Sep 1, 1983.
• Interim Status Standards Applicability.	48 FR 52718	Nov 22, 1983.
• Chlorinated Aliphatic Hydrocarbon Listing.	49 FR 5308	Feb 10, 1984.
• National Uniform Manifest.	49 FR 10490	Mar 20, 1984.
• Permit Rules-Settlement Agreement.	49 FR 17716	Apr 24, 1984.
• Warfarin & Zinc Phosphide Listing.	49 FR 19922	May 10, 1984.
• Lime Stabilized Pickle Liquor Sludge.	49 FR 23284	Jun 5, 1984.
• Exclusion of Household Waste.	49 FR 44980	Nov 13, 1984.
• Interim Status Standards Applicability.	49 FR 46095	Nov 21, 1984.
• Satellite Accumulation.	49 FR 49571	Dec 20, 1985.
• Interim Status Standards for Landfills.	50 FR 16044	Apr 23, 1985.

C. Decision

I conclude that Florida's application for program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted final authorization to operate its hazardous waste program as revised. Florida now has additional responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Florida also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authority will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Florida's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 27, 1987.

Charles H. Sutfin,

Acting Regional Administrator.

[FR Doc. 87-27415 Filed 11-30-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 81-704]

Licensing of Space Stations in Domestic Fixed-Satellite Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the final rule published in this proceeding concerning the Domestic Fixed-Satellite Service.

FOR FURTHER INFORMATION CONTACT: Kathleen Campbell (202) 634-1624.

SUPPLEMENTARY INFORMATION: On September 6, 1983, the Commission published a Report and Order (FCC 83-184) in this proceeding at 48 FR 40233. The rule change for § 25.208(c) was incorrectly displayed and is revised as follows:

PART 25—[AMENDED]

§ 25.208 Power flux density limits.

* * * * *

(c) In the band 17.7—19.7 GHz, the power flux density at the Earth's surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the following values:

—115 dB(W/m^2) in any 2 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

—115 + (δ −5)/2 dB (W/m^2) in any 4 kHz band for angles of arrival δ (in degrees) between 5 and 25 degrees above the horizontal plane; and

—105 dB(W/m^2) in any 1 MHz for angles of arrival between 25 and 90 degrees above the horizontal plane.

These limits relate to the power flux density which would be obtained under assumed free-space propogation conditions.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-27504 Filed 11-30-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-449; RM-5479]

Radio Broadcasting Services; Thomaston, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 295B to Thomaston, Maine, as that community's first FM broadcast service, in response to a petition filed by Donna Lee Knauer. Supporting comments were filed by the petitioner. Concurrence of the Canadian government has been obtained for the allotment of Channel 295B at Thomaston. Applications must conform with the technical requirements of § 73.1030(c) (1)-(5) of the rules regarding protection to the Commission's monitoring station at Belfast, Maine. With this action, this proceeding is terminated.

DATES: Effective January 7, 1988. The window period for filing applications will open on January 8, 1988, and close on February 8, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-449, adopted August 25, 1987, and released November 23, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Maine by adding Channel 295 at Thomaston.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-27512 Filed 11-30-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011 and 1152

[Ex Parte No. 274 (Sub-No. 12A)]

Rail Abandonments—Public Use Condition; Delegation of Authority

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: In order to minimize delay, the Commission is delegating to the Director of the Office of Proceedings authority to decide petitions partially to revoke and petitions to reopen abandonment exemptions authorized, respectively, under general statutory exemption authority in 49 U.S.C. 10505 and the Commission's class exemption procedures in 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* for the purpose of imposing public use conditions under the criteria of 49 CFR 1152.28. Appeals of these decisions will be acted on by the entire Commission.

DATE: December 31, 1987.

DATES: Joseph H. Dettmar (202) 275-7245. [Telephone number for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: The text of the rules is set forth below.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area) (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

This action will not significantly affect either the quality of the human environment or energy conservation. Since public comment is not required under 5 U.S.C. 553, the Regulatory Flexibility Act does not apply to this proceeding. *See* 5 U.S.C. 603.

List of Subjects in 49 CFR Part 1011

Administrative practice and procedure, Authority Delegations.

List of Subjects in 49 CFR 1152

Abandonments and discontinuances, Investigations, Public use conditions, Railroads.

Decided: November 19, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissions dissented with a separate expression.

Noreta R. McGee,

Secretary.

Title 49, Subtitle B, Chapter X, Parts 1011 and 1152 of the Code of Federal Regulations are amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for 49 CFR Part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.2 is amended by revising paragraph (a)(8) to read as follows:

§ 1011.2 The Commission.

(a) * * *

(8) All appeals of initial decisions determining—

(i) Whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing),

(ii) Whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d), for purposes of negotiations, and

(iii) Whether partially to revoke or to reopen abandonment exemptions authorized, respectively, under 49 U.S.C. 10505 and 49 CFR 1152 Subpart F for the purpose of imposing public use conditions under the criteria in 49 CFR 1152.28.

Appeals on these matters must be filed within 10 days of the date the action is taken, and responses must be filed within 10 days thereafter.

* * * * *

3. Section 1011.8 is amended by adding a new paragraph (c)(3) to read as follows:

§ 1011.8 Delegation of authority by the Interstate Commerce Commission

* * * * *

(c) * * *

(3) Whether partially to revoke or to reopen abandonment exemptions authorized, respectively, under 49 U.S.C. 10505, and 49 CFR 1152 Subpart F for the purpose of imposing public use conditions under the criteria in 49 CFR 1152.28.

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

4. The authority citation for 49 CFR Part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 16 U.S.C. 1247(d); 31 U.S.C. 9701; 45 U.S.C. 904 and 915; and 49 U.S.C. 10321, 10362, 10505, and 10903 et seq.

5. Section 1152.25 is amended by revising paragraph (e)(1) to read as follows:

§ 1152.25 Participation in abandonment or discontinuance proceedings

* * * * *

(e) *Appellate procedures*—(1) *Scope of rule.* Except as specifically indicated below, these appellate procedures are to be followed in abandonment and discontinuance proceedings in lieu of the general procedures at 49 CFR 1115. Appeals of initial decisions of the Director of the Office of Proceedings determining—

(i) Whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing),

(ii) Whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d), for purposes of negotiations, and

(iii) Whether partially to revoke or to reopen abandonment exemptions authorized, respectively, under 49 U.S.C. 10505 and 49 CFR 1152 Subpart F for the purpose of imposing public use conditions under the criteria in 49 CFR 1152.28 will be acted upon by the entire Commission pursuant to the rule set forth at 49 CFR 1011.2(a)(8).

An original and 10 copies of all appeals, and replies to appeals, under this section should be filed with the Commission.

* * * * *

[FR Doc. 87-27644 Filed 11-30-87; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 52, No. 230
Tuesday, December 1, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

Unauthorized Section 504 Grant

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations regarding the servicing action on unauthorized Section 504 grants when FmHA will continue with the recipient. This action is being taken because current regulations requiring the repayment of unauthorized assistance impose an undue hardship upon elderly borrowers. The intended effect of this action is to determine the servicing action based on the individual borrower's financial condition.

DATE: Comments must be submitted on or before February 1, 1988.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jean F. Leavitt, Senior Loan Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, Room 5309, Washington, DC 20250, telephone: (202) 382–1452.

SUPPLEMENTARY INFORMATION: This proposed rulemaking has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The SFH program is listed in the Catalog of Federal Domestic Assistance under:

10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.417 Very Low-Income Housing Repair Loans and Grants

Catalog numbers 10.410, 10.411, and 10.417 are excluded from Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Progam." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–90, an Environmental Impact Statement is not required.

The FmHA Section 504 Grant Program was enacted to provide financial assistance to eligible elderly applicants for the repair or improvement of their dwelling. The annual income must be so low that the applicant is unable to repay as a loan the total assistance received.

Current FmHA Regulations (7 CFR Part 1951; Section 1951.612(a)(5)) requires the recipient to repay the unauthorized grant assistance as a loan, even though the recipient is not at fault. The grant is to be repaid either using the same rates and terms of a Section 504 loan or at an interest rate of 5 percent for a term of not more than 5 years. The rate and term used would depend on whether or not the recipient was initially eligible for a Section 504 Loan or the grant was made for unauthorized purposes.

FmHA proposes in § 1951.612(a)(5) to use the borrower's debt repayment ability to determine if all of the unauthorized assistance can be repaid as a loan. If unable to show repayment ability the grant does not have to be repaid until non-occupancy or transfer of title by the recipient.

List of Subjects in 7 CFR Part 1951

Account servicing, Rent subsidies Subsidies.

Therefore, as proposed, Part 1951, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 42 U.S.C. 1480, 7 CFR 2.23, 7 CFR 2.70.

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

2. Section 1951.612(a)(5) is revised to read as follows:

§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.

* * * * *

(a)* * *

(5) *Section 504 grant.* Form FmHA 431–3, "Household Financial Statement and Budget," will be completed to determine the recipient's ability to repay all of the unauthorized assistance with the same interest rate and term of a Section 504 loan.

(i) If the recipient has debt repayment ability to repay all of the unauthorized assistance, Form FmHA 440–16 "Promissory Note" will be executed, and the best mortgage obtainable will be taken to secure the unauthorized assistance to be repaid, if the amount is $2,500 or more.

(ii) If the recipient does not have the repayment ability for the unauthorized assistance, a repayment agreement will be executed (see Exhibit F in any FmHA office), and the best mortgage obtainable will be taken to secure the unauthorized assistance to be repaid, if the amount is $2,500 or more. However, no action will be taken to collect the unauthorized assistance until non-occupancy or transfer of title by the recipient.

* * * * *

Dated: October 8, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-27594 Filed 11-30-87; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Parts 316 and 350

[Docket No. 85-014P]

Elimination of Sealing Requirement for Rendered Edible Animal Fat

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Federal meat inspection regulations to allow inspected and passed product, particularly rendered edible animal fat, transported in properly labeled tank cars or tank trucks, to move in commerce without an official seal. Currently, establishments which process and then transport such product to another establishment must have the means of conveyance sealed with an officially seal by a Program employee. Establishments receiving the official sealed conveyance containing such product must have the seal broken by a Program employee. This action would remove a sealing requirement that no longer appears to be necessary. FSIS is also proposing to delete the requirement that a Program employee insert the "date of loading" on the label affixed to the tank car or tank truck. This action would permit an establishment employee to insert the "date of loading."

DATE: Comments must be received on or before February 1, 1988.

ADDRESS: Written comments should be sent in duplicate to the Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3175 South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington DC 20250.

FOR FURTHER INFORMATION CONTACT: Bill F. Dennis, Director, Processed Products Inspection Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposal would allow rendered edible animal fat, shipped in tank cars or tank trucks, to be transported in commerce without an official seal provided the tank car or tank truck bears a label. This change could affect in a positive manner about 250 meat establishments as it removes an unnecessary sealing requirement.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this proposal would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). At present, there are approximately 250 establishments involved in either shipping or receiving rendered edible animal fats. These establishments range from small to very large operations. These establishments are presently prohibited from shipping product unless it is sealed by a Program employee. Those receiving such product must have the seal broken by a Program employee.

This proposal would allow establishments to ship and receive products without having to wait for a inspector to seal the tank car or break the seal. This is particularly beneficial for small establishments that may have to hold the tank car until the inspector is available to seal the tank car or tank truck and/or to break the seal.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office. Please include the docket number that appears in the heading of this document. All comments submitted in response to this proposal will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Tank cars or tank trucks carrying inspected and passed product (which appears to involve only rendered edible animal fats) are required to bear a label in accordance with section 316.14 of the Federal meat inspection regulations (9 CFR 316.14). The label must contain the name of the product, the official inspection legend, and the words "date of loading" followed by a space in which the inspector shall insert the date.

Rendered edible animal fat is shipped by tank car or tank truck, under official seal, to other federally inspected establishments for further processing. Before a refining establishment can unload the rendered edible animal fat, § 325.16 of the Federal meat inspection regulations (9 CFR 325.16) requires that the official seal be broken by a Program employee. When a sealed tank car or tank truck is received by an establishment and a Program employee is not present, the establishment must wait until a Program employee arrives at the establishment to break the seal. This can prevent the inspector from completing inspection of the other establishments on his/her patrol assignment and does not effectively utilize inspection resources.

Formerly, the rationale for sealing a tank car or tank truck was to insure that "inspected and passed" product did not become adulterated. The sealing requirement was reinstated in 1965 after the Department discovered uninspected rendered edible fat being transported. However, the majority of products regulated by FSIS are permitted to be transported under the official inspection legend with proper labeling and do not require official sealing. Products bearing proper labeling and the mark of inspection have an equal chance of becoming adulterated as does rendered edible animal fat. Since 1965 FSIS has not experienced problems with any particular product.

FSIS is proposing to amend the Federal meat inspection regulations to eliminate the sealing provision in § 316.14(b) (9 CFR 316.14(b)) for product moved in tank cars or tank trucks. This product would be permitted to move in commerce provided the tank car or tank truck bears a label in accordance with § 316.14 of the Federal meat inspection regulations (9 CFR 316.14).

In addition, this proposal would delete the requirement under § 316.14 that the "date of loading," a required feature of the label, be inserted by an inspector. This change will permit the "date of loading" to be inserted by an establishment employee. FSIS has determined that requiring a Program employee to insert the date is not conducive to effective utilization of inspection resources and would have no effect on the wholesomeness of the product.

FSIS is also proposing to amend Part 350 of the voluntary inspection and certification regulations (9 CFR Part 350) by deleting the requirement that tank

cars and tank trucks be equipped for sealing and sealed by a Program employee before FSIS will furnish the identification service provided under § 350.3 (9 CFR 350.3).

List of Subjects

9 CFR Part 316

Meat inspection, Sealing, Edible products, Animal fat.

9 CFR Part 350

Meat inspection, Certification service.

For the reasons stated in the preamble, Parts 316 and 350 of the Federal meat inspection regulations would be amended as follows:

PART 316—MARKING PRODUCTS AND THEIR CONTAINERS

1. The authority citation for Part 316 would be revised to read as follows:

Authority: 34 Stat. 1264, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

2. Section 316.14 would be amended by removing the paragraph designations and by revising it to read as follows:

§ 316.14 Marking tank cars and tank trucks used in transportation of edible products.

Each tank car and each tank truck carrying inspected and passed product from an official establishment shall bear a label containing the name of the product in accordance with § 317.2 of this subchapter, the official inspection legend containing the number of the official establishment and the words "date of loading," followed by a suitable space in which the date the tank car or tank truck is loaded shall be inserted. The label shall be located conspicuously and shall be printed on material of such character and so affixed as to preclude detachment or effacement upon exposure to the weather. Before the car or truck is removed from the place where it is unloaded, the carrier shall remove or obliterate such label.

PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS

3. The authority citation for Part 350 continues to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 60 Stat. 1087, as amended, 7 U.S.C. 1622; 60 Stat. 1090, as amended, 7 U.S.C. 1624; 34 Stat. 1264, as amended, 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695; 7 CFR 2.15(a), 2.92.

4. Paragraph (a)(4) of § 350.3 would be revised to read as follows:

§ 350.3 Types and availability of service.

(a) * * *

(4) The service will be available for products moved in tank cars and tank trucks from an official establishment or from a location operating under this service only if such tank cars or tank trucks bear a label before leaving such official establishment or such other location, in accordance with 9 CFR 316.14 and 317.2.

* * * * *

Done at Washington, D.C., on November 24, 1987.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-27463 Filed 11-30-87; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-35-AD]

Airworthiness Directives; Gulfstream Aerospace Models 112, 112B, 112TC, 112TCA, 114, and 114A Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action proposes to adopt a new Airworthiness Directive (AD), applicable to the Gulfstream Aerospace Model 112 and 114 series airplanes, which would require inspections and repair as necessary in the area of the vertical stabilizer forward attachment to the fuselage. Reports have been received of cracks forming where the vertical stabilizer spar attaches to the fuselage structure. The proposed action will detect these cracks and provide repair instructions which will preclude failure of the fuselage frame and vertical fin attachment fitting and subsequent loss of the airplane.

DATE: Comments must be received on or before January 3, 1988.

ADDRESSES: Gulfstream Aerospace Service Bulletin Nos. SB-112-72A and SB-114-23A, both dated August 31, 1987, applicable to this AD may be obtained from Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123; or the Rules Docket at the address below. Send comments on the proposal in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-35-AD, Room 1558, 601 East 12th St., Kansas City, Missouri 64106.

Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Tom Dragset, Airplane Certification Branch, DOT, FAA, Southwest Region, Fort Worth, Texas 76193-0150; Telephone (817) 624-5155.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-35-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been reports of cracks in the vertical fin attachment fitting (P/N 43255-1) and the fuselage frame (P/N 43205-1) at F.S. 230.5 on Gulfstream Aerospace Model 112 and 114 series airplanes. To date there have been approximately 45 aircraft with cracks reported in this area. Should these cracks go undetected, the vertical stabilizer may fail and result in the loss of the airplane. Since this condition is likely to exist or develop on other Gulfstream Aerospace Model 112, 112B, 112TC, 112TCA, 114, and 114A airplanes of the same type design, FAA is proposing an AD based upon the information currently available which would require inspections and repair as necessary in the area of the vertical stabilizer forward attachment to the fuselage in accordance with Gulfstream

Aerospace Service Bulletin Nos. SB–112–72A or SB–114–23A as applicable. The FAA has determined there are approximately 1,064 airplanes affected by this proposal. The inspection cost imposed by the proposed AD would be $35 per airplane for a total estimated cost of $37,240 to the private sector. If cracks are found, repairs must be made at the owner's expense.

This is not considered a regulatory cost to the AD since owners/operators are required by other regulations to maintain their aircraft to specific safety and airworthiness standards. The FAA views the economic impact of this proposed AD to be negligible and concludes that a full regulatory evaluation is not warranted.

Therefore, I certify that this section (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Gulfstream Aerospace (Rockwell): Applies to Model 112 and 112B (S/N's 1 through 544 and 13000); 112TC and 112TCA (S/N's 13001 through 13309); and 114 and 114A (S/N's 14000 through 14540) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the vertical fin attachment fitting (P/N 43255–1) and the fuselage frame (P/N 43205–1) in the area of F.S. 230.5, accomplish the following:

(a) Within the next 50 hours a time-in-service (TIS), or upon the accumulation of 250 hours total TIS, whichever occurs later, inspect for cracks in fuselage frame (P/N 43205–1), and vertical fin attachment fitting (P/N 43255–1) in accordance with Part I of Gulfstream Aerospace Service Bulletin Nos. 112–72A or SB–114–23A both dated August 31, 1987, as applicable.

(b) If cracks are found in the fuselage frame or vertical fin attachment fitting, prior to further flight repair in accordance with Part II of Gulfstream Aerospace Service Bulletin Nos. SB–112–72A or SB–114–23A both dated August 31, 1987, as applicable.

(c) If no cracks are found, thereafter at intervals not to exceed 100 hours time-in-service reaccomplish the inspection specified in paragraph (a) of this AD until the repair required by paragraph (b) of this AD is accomplished.

(d) The repetitive inspections specified in paragraph (c) of this AD may be discontinued when the airplane is modified as specified in paragraph (b) of this AD.

(e) The airplane may be flown in accordance with FAR 21.197 to a location where the repair can be performed.

(f) An equivalent method of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, DOT, FAA, Southwest Regional Office, Fort Worth, Texas 76193–0150, Telephone (817) 624–5150.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Gulfstram Aerospace Corporation, Wiley Post Airport, P. O. Box 22500, Oklahoma City, Oklahoma 73123; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 16, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–27540 Filed 11–30–87; 8:45am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–143–AD]

Airworthiness Directives; Sud Aviation Model Caravelle SE210

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to all Sud Aviation Model Caravelle SE210 series airplanes, that would require inspection, and replacement, if necessary, of the main landing gear manual uplock release mechanism screwjack shaft and square end fitting. This proposal is prompted by reports of incidents involving breakage of the manual uplock release mechanism. If breakage of the screwjack shaft occurs, manual uplock release of the main landing gear is no longer possible. This condition, if not corrected, could lead to the inability to manually extend the main landing gear.

DATES: Comments must be received no later than January 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–143–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Sud Aviation/Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA,

Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-143-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on Model Caravelle SE210 series airplanes. There have been reports of the main landing gear manual uplock release mechanism becoming damaged in service, resulting in the inability to lower the main landing gear. Early failure detection is possible by inspection of this mechanism for wear damage and/or cracks.

The manufacturer has issued Sud Service Bulletin 32-121, dated September 9, 1982, which describes inspection of the main landing gear manual uplock release mechanism screwjack shaft and square end fitting; and Sud Service Bulletin No. 32-96, Rev. 3, dated January 18, 1982, which describes rework and incorporation of new parts for the manual uplock release mechanism. DGAC has issued an Airworthiness Directive which declares both service bulletins to be mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection of the main landing gear manual uplock release mechanism, and replacement, if necessary, in accordance with the service bulletins previously mentioned.

It is estimated that 5 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $400.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Sud Aviation: Applies to Model Caravelle SE210 series airplanes, as listed in Sud Service Bulletin Number 32-121, dated September 9, 1982, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent breakage of main landing gear manual uplock release mechanism screwjack shaft, accomplish the following:

A. Prior to the accumulation of 2,500 landings or 12 months, whichever occurs first after the effective date of this AD, perform inspections of the square end fitting (LH and RH sides) P/N 210.43.20.123 and screwjack shafts P/N 210.43.20/122 or P/N 210.43.20.920, as described in paragraph 4B of Caravelle Sud Service Bulletin No. 32-121, dated September 8, 1982.

B. Repeat the inspection required by paragraph A, above, as follows:

1. At intervals not exceeding 5,000 landings or 2 years, whichever occurs first, for aircraft on which the procedures described in Sud Service Bulletin 32-96 have not been accomplished.

2. At intervals not exceeding 15,000 landings or 6 years, whichever occurs first, for aircraft on which the procedures described in Sud Service Bulletin 32-96 have been accomplished.

C. In the event that damage or cracks are detected on the square end fitting or screwjack shaft, or there are more than two pin holes on the screwjack shaft, replace affected parts prior to further flight, in accordance with Sud Service Bulletin No. 32-96, Revision 3, dated January 18, 1982.

D. An alternate means of compliance or adjustment of the compliance times, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Sud Aviation/Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 12, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-27541 Filed 11-30-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-CE-33-AD]

Airworthiness Directives; de Havilland Models DHC-2 Mk. I and DHC-2 Mk. III Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to supersede Airworthiness Directive (AD), 87-01-04, Amendment 39-5488, applicable to de Havilland Model DHC-2 Mk. I and DHC-2 Mk. III airplanes, which requires initial and repetitive dye penetrant inspections for cracks in the lugs of the lower attachment fork fitting of certain wing lift strut assemblies and serial numbers (S/N), and replacement of these strut assemblies, if cracked. This proposal extends the effectivity of the required inspection to additional strut assemblies as well as the replacement, if cracked. This action is prompted by a revision to the applicable service information by the manufacturer to prevent failure of the wing structure and loss of the aircraft.

DATES: Comments must be received no later than December 31, 1987.

ADDRESSES: Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-33-

AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. The applicable service information may be obtained from the de Havilland Aircraft Company of Canada, a division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information may be examined at the FAA, Central Region, Office of the Regional Counsel, noted previously. Comments may be inspected at the FAA, Central Region, Office of the Regional Counsel between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT:

Mr. Lester Lipsius, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communitations received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-33-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

On December 5, 1986, FAA issued AD 87-01-04, Amendment 39-5488 (51 FR 45306; December 18, 1986), to require initial and repetitive dye penetrant inspections for cracks in the lugs of the lower attachment fork fitting of certain wing lift strut assemblies and replacement of these strut assemblies, if cracked, on de Havilland DHC-2 Mk. I (including L-20A, YL-20, U-6, and U-6A) and DHC-2 Mk. III airplanes. Since issuance of that AD, the FAA has determined that the inspection of all wing lift strut assemblies is necessary, regardless of the strut S/N or date of manufacture. At the time S/B No. 2/41 was issued, it was believed that the inspection requirements were necessary for only strut assemblies C2W1103A and C2W1104A with strut S/N A071 through A0129 inclusive. Since that time, another report has been received of stress corrosion cracking in the lower attachment fitting of a strut whose S/N was not within the A071 through A0129 number range. As a result of this report, de Havilland has issued S/B No. 2/41, Revision A, dated August 14, 1987, which recommends inspection of all serial numbered strut assemblies C2W1103, C2W1103A, C2W1104, and C2W1104A, and replacement of cracked assemblies with strut assemblies C2W1115-1 and C2W1115-2 which have steel end fittings. De Havilland also states that wing strut assemblies C2W1103 and C2W1103A are identical, and C2W1104 and C2W1104A are identical. Transport Canada, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada has issued a Canadian AD CF-85-08 dated July 24, 1985, but has not yet revised their AD to require compliance with de Havilland S/B No. 2/41, Revision A. The FAA has examined the available information related to the issuance of S/B No. 2/41, Revision A, dated August 14, 1987, and believes that the condition addressed by this bulletin is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Therefore, an AD is proposed which would supersede AD 87-01-04, Amendment 39-5488, and require inspection of all DHC-2 strut S/N's of wing strut assemblies C2W1103, C2W1103A, C2W1104, and C2W1104A on de Havilland DHC-2 Mk. I and DHC-2 Mk. III airplanes. It is estimated that 385 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 man-hours per airplane to accomplish the required inspections, and that the average labor cost would be $40 per man-hour. Based on these figures, the cost of inspecting all struts is estimated to be $240 per airplane. The total cost impact of the AD on U.S. operators is estimated to be $92,400 for each fleet inspection.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 87-01-04, Amendment 39-5488 (51 FR 45306; December 18, 1986), with the following new airworthiness directive:

de Havilland: Applies to all Model DHC-2 Mk. 1 (including L-20A, YL-20, U-6, and U-6A) and DHC-2 Mk. III (Turbo Beaver) airplanes with wing strut assemblies C2W1103, C2W1103A, C2W1104 and C2W1104A, certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To detect cracks due to stress corrosion in wing lift strut assemblies, accomplish the following:

(a) Within 100 hours time-in-service (TIS), or one month, whichever occurs first, after the effective date of this AD, and thereafter at intervals not to exceed 500 hours TIS, or 12 calendar months, whichever occurs first:

(1) Remove wing strut assemblies, C2W1103 or C2W1103A and C2W1104 or C2W1104A from the aircraft and prepare for inspection as described in "ACCOMPLISHMENT INSTRUCTIONS" in de Havilland Service Bulletin (S/B) No. 2/41, Revision A, dated August 14, 1987.

(2) Conduct a dye penetrant inspection with a 10-power glass for cracks in the lugs of the lower attachment clevis fitting.

(3) If cracks are found, prior to further flight, replace the complete strut assembly with a strut assembly of the same part number that has had the lower clevis fitting inspection using the dye penetrant procedure and has been found free of cracks, or strut

assembly C2W1115–1 or C2W1115–2, as appropriate.

(4) If no cracks are found clean the lower clevis fitting and re-install the wing strut assembly.

(5) If wing strut assembly C2W1115–1 or C2W1115–2 is installed, the recurring visual inspection in Paragraph (a) is no longer required.

(b) the airplane may be flown in accordance with FAR 21.197 to a location where the requirements of this AD may be accomplished.

(c) Upon submission of substantiating data by an owner or operator, through an FAA Maintenance Inspector, the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the compliance time of this AD.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to the de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; Telephone (416) 633–7310, or may be examined at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 12, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–27539 Filed 11–30–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–ANM–26]

Proposed Alteration of Transition Area; Rifle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Rifle, Colorado, 1,200 foot transition area to provide additional controlled airspace to encompass a new holding pattern.

DATES: Comments must be received on or before February 2, 1988.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 87–ANM–26, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 87–ANM–26, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ANM–26". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA prsonnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace for aircraft using a new holding pattern.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established boyd of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Propsoed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Rifle, Colorado, Transition Area (Amended)

On the 7th line after "39°44'00" N., long. "106°57'00" W., change the remaining description to read as follows: to lat. "39°19'00" N., long. "106°57'00" W., to lat. "39°11'00" N., long. "107°37'00" W., to lat. "39°25'00" N., long. "107°54'00" W., to point of beginning excluding all other controlled airspace which overlaps.

Issued in Seattle, Washington, on November 13, 1987.

Temple H. Johnson, Jr.,

Manger, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87–27542 Filed 11–30–87; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-2641]

Fleetwood Enterprises, Inc.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen and vacate the order.

SUMMARY: Fleetwood Enterprises, Inc., a corporate respondent in the order in Docket No. C-2641, has requested the Federal Trade Commission to vacate a 1974 consent order issued against it concerning its mobile home owners warranty and warranty practices. This document announces the public comment period on the petition.

DATE: Deadline for filing comments in this matter is December 20, 1987.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. The requests for copies of the request should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2982.

SUPPLEMENTARY INFORMATION: The order in Docket No. C-2641 was published at 40 FR 18983 on May 1, 1975. The petitioner, Fleetwood Enterprises, Inc., manufacturers mobile homes which are sold to the public through authorized dealers. Petitioner seeks to have the order vacated in its entirety. The order requires Fleetwood to offer a warranty that describes the identity and address of the warrantor, the nature and extent of the warranty offered, the remedies available to the purchaser under the warranty, the manner in which Fleetwood intends to provide for performance of warranty obligations, any requirements which must be fulfilled by purchasers in order to obtain warranty service, a uniform procedure to be followed by purchasers in order to request warranty performance, and a uniform procedure available to purchasers to resolve warranty disputes; that Fleetwood enter into formal agreements with its dealers setting forth the dealers' warranty service obligations; that all mobile homes be inspected prior to delivery to purchasers for defects and reinspected 90 days after delivery; and that warranty repairs be completed within specified time frames.

List of subjects in 16 CFR Part 13

Mobile Homes.

Emily H. Rock,

Secretary.

[FR Doc. 87-27524 Filed 11-30-87; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-2642]

Skyline Corporation

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen and vacate the order.

SUMMARY: Skyline Corporation, a corporate respondent in the order in Docket No. C-2642, has petitioned the Federal Trade Commission to vacate a 1974 consent order issued against it concerning its mobile home owners warranty and warranty practices. This document announces the public comment period on the petition.

DATE: Deadline for filing comments in this matter is December 20, 1987.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the request should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2982.

SUPPLEMENTARY INFORMATION: The order in Docket No. C-2642 was published at 40 FR 19460 on May 5, 1975. The petitioner, Skyline Corporation, manufactures mobile homes which are sold to the public through authorized dealers. Petitioner seeks to have the order vacated in its entirety. The order requires Skyline to offer a warranty that describes the identity and address of the warrantor, the nature and extent of the warranty offered, the remedies available to the purchaser under the warranty, the manner in which Skyline intends to provide for performance of warranty obligations, any requirements which must be fulfilled by purchasers in order to obtain warranty service, a uniform procedure to be followed by purchasers in order to request warranty performance, and a uniform procedure available to purchasers to resolve warranty disputes; that Skyline enter into formal agreements with its dealers setting forth the dealers' warranty service obligations, that all mobile homes be inspected prior to delivery to purchasers for defects and reinspected 90 days after delivery and that warranty repairs be completed within specified time frames. The petition was placed on the public record on November 20, 1987.

List of Subjects in 16 CFR Part 13

Mobile homes, Trade practices.

Emily H. Rock,

Secretary.

[FR Doc. 87-27525 Filed 11-30-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. 87-15]

Construction and Maintenance; Contract Procedures; Standardized Contract Clauses

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to revise its regulations on contract procedures to implement the provision mandated by section 111(c) of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 which became law on April 2, 1987. Section 111(c) amends Section 112 of Title 23, United States Code, to direct the Secretary of Transportation to issue regulations establishing and requiring certain standardized contract clauses in all Federal-aid highway contracts unless otherwise provided for by State law. The standardized contract clauses will provide for the equitable adjustment of contract terms: (1) Where site conditions differ from those specified in the contract, (2) where work has been suspended by order of the contracting agency (other than a suspension of work caused by the fault of the contractor or by weather), and (3) where there are material changes in the scope of work specified in the contract.

DATES: Comments must be received on or before February 1, 1988.

ADDRESSES: Submit written, signed, comments, preferably in triplicate, to the Federal Highway Administration, HCC-10, FHWA Docket No. 87-15, Room 4205, 400 Seventh Street SW., Washington, DC 20590. All comments and suggestions received will be available for

examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, Office of Highway Operations, 202–366–1548, or Mr. Wilbert Baccus, Office of Chief Counsel, 202–366–1396, Federal Highway Administration, 400 seventh Street SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Under the Federal-aid highway program, federally assisted projects are generally constructed by private contractors under contract to the State highway agencies (SHA's) or local governmental agencies. Payment to the contractors is based on the amount of work performed in accordance with the terms of the contract. The FHWA reimburses the statutory Federal share of the costs to the SHA's as the projects are constructed and the costs are incurred.

The plans, specifications, and estimates (PS&E) are prepared by the SHA's or their representatives. Due to the nature of highway construction and conditions under which the work is performed, it is sometimes impractical for the designer to accurately determine and describe in the contract documents all the subsurface or latent conditions existing at project sites. Consequently, in some instances the subsurface conditions which are found during construction may be different from those shown in the plans or may not be shown in the plans at all. These unanticipated conditions may cause a change in construction costs.

There also may be some situations which develop during construction requiring the contracting agency (SHA or local governmental agency) to order the contractor to slow down or stop the progress of construction through no fault of the contractor and not due to weather conditions. These situations may occur, for example, when a defect in the design is found and the contracting agency needs time to study the problem and correct the design or when a third party, not part of the Federal-aid contract, does not perform as originally anticipated. These slow downs or stoppages in the work may also cause a change in construction costs.

There also may be some situations encountered during construction which require the contracting agency to make alterations in the design. When these occur, the contract quantities are normally changed to reflect the alteration, and the contract is modified accordingly.

Some of these alterations, however, could also significantly increase or decrease the contractor's production costs in addition to the change in the amount of work required by the contract.

These possible unanticipated variations in contract costs in some instances add up to sizable amounts of money and may constitute an additional risk to the contractor or contracting agency. In those States where the contracting agency shifts the responsibility of such costs to the contractor, the contract documents normally do not provide for a mechanism to allow the contracting agency to legally adjust the contract to recover the decrease in costs or to compensate the contractor for the increases. Thus, the contracting agency does not normally recover the decreases and the contractor can only recover the increases by anticipating such costs and increasing the amount bid accordingly or by submitting claims. Claims and the possible resulting litigation process can be quite lengthy and costly and often yield unsatisfactory results to both parties. On the other hand, the contractor's contingency amount included in the increased bid may exceed the actual costs and thus result in an unreasonable windfall unnecessarily increasing the construction costs to the public.

Previous FHWA policy did not mandate any specific contract provisions to address resolution of these situations, but encouraged the adoption of contract language, such as clauses 104.02 and 108.07 of the American Association of State Highway and Transportation Officials (AASHTO) "Guide Specifications for Highway Construction" (available from AASHTO, 444 North Capitol Street NW., Suite 225, Washington, DC 20001) which provides for an equitable adjustment of the contract terms in the event of such unanticipated variations in contract costs. Section 111(c) of the STURAA of 1987, Pub. L. 100–17, 101 Stat. 132, 147, however, makes it a requirement for the Secretary of Transportation to develop and require a standardized contract clause addressing the equitable adjustment of the contract terms for differing site conditions, material changes in the scope of work, and suspensions of work ordered by the contracting agency other than those caused by the fault of the contractor or by weather, unless otherwise provided for by State law.

Highway contractor organizations have voiced their concerns for a changed conditions clause and have indicated that contractors should not have to gamble on the possibility of differing site conditions, material changes in the scope of the work, or suspensions of work for the convenience of the contracting agency. Contractors should be able to bid a project with the expectation of being compensated for all the acceptable work which is performed in accordance with the terms of the contract. In addition, they have indicated that a standardized arrangement should provide more uniformity among the States thus eliminating much of the frustration being experienced by contractors who deal with several States at the same time.

The standardized clauses proposed by the FHWA under the new regulation, developed to implement the congressional mandate, address each of the factors mandated by the act.

A significant number of contracting agencies have already adopted changed conditions clauses. Many of these use language similar to AASHTO, or to the Federal Acquisition Regulations (FAR). Therefore, in order to provide as much continuity as possible, the proposed changed conditions clauses follow closely, where possible, the language of both the AASHTO "Guide Specifications for Highway Construction" and the FAR. (The FAR are contained in 48 CFR, Parts 1 to 99, and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The FAR only apply by regulation to contracts entered directly by the Federal Government. Therefore, they are not mandatory on Federal-aid highway contracts because these contracts are between the SHA or local governmental agency and the contractor.)

The AASHTO language and the FAR language are substantially the same with respect to the differing site conditions clause except that AASHTO does not provide adjustment for impact costs (also known as "ripple damages"—increased costs attributable to the differing site conditions but not part of the changed work). The proposed standardized clause adopts the FAR approach in providing adjustment for impact costs to the extent that the impacted work must also be part of the contract. Under the proposed clause, either the contractor or the contracting agency may initiate an adjustment to the terms of the contract. The adjustment may be for or against the contractor; however, no adjustment for the benefit

of the contractor is allowed unless the contractor notifies the contracting agency in writing prior to performance of the affected work or disturbing the alleged differing site conditions.

There is no AASHTO Guide Specification which is comparable to the FAR suspension of work clause. The FAR suspension of work clause recognizes "constructive suspensions" (where the contracting agency causes delay, due to action or inaction, without issuing a suspension order). The proposed standardized clause differs from FAR in that constructive suspensions are not covered. As in FAR, the proposed clause does not allow the recovery of profit on costs due to suspensions of work and the suspensions must be for unreasonable periods. Therefore, the suspension periods do not include brief, customary suspensions for reasons inherent to highway construction, such as for the collection of material samples; testing of materials; approvals of shop drawings, material sources, etc.; and other reasonable and customary suspensions necessary for the orderly supervision of construction by the contracting agency.

In the case of the material changes in the scope of work clause, the FAR and the AASHTO clauses are quite different. The FAR clause is very specific regarding the types of changes, provides for impact costs, and also covers "constructive change orders." A constructive change order occurs when the contracting agency causes a change but does not issue a written order. The AASHTO language is of general nature, recognizes formal change orders only, and does not provide for impact costs. The proposed standardized clause adopts the AASTO approach except that it also provides for impact costs to the extent that the impacted work must also be part of the contract. The proposed clause does not specify the threshold amount increase or decrease in quantities that would justify a request for an adjustment to the contract based on changed production costs because this is normally defined in the contracting agency's standard specifications.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The new regulation will impose new mandatory requirements on State and local governments because it requires the inclusion of a changed conditions contract clause in all Federal-aid highway contracts unless the State adopts or has adopted by statute a formal procedure for the development of a changed conditions contract clause or adopts or has adopted a statute which does not permit inclusion of such a contract clause. A changed conditions contract clause should be of benefit to both the contractors and contracting agencies; furthermore, its inclusion in Federal-aid highway contracts is mandated by the STURAA of 1987.

The proposed regulation should have a positive economic impact because it should: (1) Reduce the construction costs in general by reducing the uncertainties which the contractor must price during the bidding process, (2) reduce the number of claims reaching litigation thus reducing the legal expenses of both the contractor and contracting agencies, and (3) promote a better working relationship between the contractors and contracting agencies.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA hereby certifies that this proposal, if promulgated, will not have a significant economic impact on substantial number of small entities and the preparation of a full regulatory evaluation is not required.

In consideration of the foregoing, the FHWA proposes to amend Part 635, Subpart A of Chapter I of Title 23, Code of Federal Regulations as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program)

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—transportation, Highways and roads.

Issued on: November 23, 1987.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

The FHWA proposes to amend 23 CFR Part 635, Subpart A, as follows:

PART 635—CONSTRUCTION AND MAINTENANCE

Subpart A—Contract Procedures

1. The authority citation for Part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128, and 315; 31 U.S.C. 6506; 42 U.S.C. 3334, 4601 *et seq.*; 49 CFR 1.48(b), unless otherwise noted.

2. Part 635, Subpart A is amended by adding a new § 635.129 to read as follows:

§ 635.129 Differing site conditions, suspensions of work, and material changes in the scope of work.

(a) Except as provided in paragraph (b) of this section, the following contract clauses shall be made part of and incorporated in, each highway construction project approved under 23 U.S.C. 106:

(1) *Differing site conditions.* (i) Should the contractor encounter during the progress of the work subsurface or latent physical conditions at the site differing materially from those indicated in the contract or unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the contract, the contractor shall promptly notify the engineer in writing of the specific differing conditions before they are disturbed or the affected work is performed.

(ii) Upon written notification, the engineer will promptly investigate the conditions, and if the engineer determines that they do materially differ and cause an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the contract whether or not changed as a result of the conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

(iii) No contract adjustment for the benefit of the contractor shall be allowed unless the contractor has given the written notice required.

(2) *Suspensions of work ordered by the engineer.* (i) The engineer reserves the right to suspend all or any portion of the work for any reasons or convenience of the engineer at anytime during the execution of the work. If the performance of all or any portion of the work is suspended for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor deems that additional compensation and/or contract time is due the contractor as a result of such suspension, the contractor shall submit to the engineer in writing a request for adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer shall immediately consider the contractor's request. If the engineer agrees that the

cost of and/or the time required for the performance of the contract has been increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, subcontractors at any tier, or by weather, the engineer shall make an equitable adjustment (excluding profit) and modify the contract in writing accordingly.

(iii) No contract adjustment shall be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment shall be allowed under this clause for any suspension to the extent that performance would have been so suspended by any other cause or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(3) *Material changes in scope of work.* (i) The engineer reserves the right to make, at any time during the progress of the work, such increases or decreases in quantities and such alterations in the work as necessary to satisfactorily complete the project. Such increases or decreases and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) Unless such alterations and increases or decreases materially change the character of the work to be performed under this contract or the cost thereof, the altered work shall be paid for at the same unit prices as other parts of the work.

(iii) If, however, the magnitude of the alteration is such as to alter the scope of work specified in the contract by materially changing either the character or the unit costs of the work under the contract, whether or not changed by any such alteration, an adjustment will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work; if a basis cannot be agreed upon, then an adjustment shall be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(b) The provisions of this section shall be governed by the following:

(1) Where State statute does not permit one or more of the contract clauses included in paragraph (a) of this section, the State statute shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

(2) Where the State highway agency has adopted, by State statute, a formal procedure for the development of one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses as developed by the State highway agency may be included in Federal-aid highway contracts in lieu of the corresponding clause or clauses in paragraph (a) of this section upon the Division Administrator's determination that the proposed clause or clauses are comparable to the corresponding clause of paragraph (a) of this section.

[FR Doc. 87-27521 Filed 11-30-87; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

31 CFR Part 0

Minimum Standards of Conduct

AGENCY: Treasury.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department of the Treasury's Minimum Standards of Conduct. The amendment is total, and this proposed rule would substitute for the existing Standards.

The Ethics in Government Act of 1978, as amended, made a number of changes in the post-employment restrictions of 18 U.S.C. 207, as well as imposing new and distinctly different financial disclosure requirements on certain Federal employees. These changes in the law are not reflected in the Department's current Minimum Standards of Conduct. Recognizing that an amendment to the Standards was required, the Department formed an internal task force to review the entire Standards for needed changes. This proposed rule is the result of that review.

DATE: Comments must be received on or before February 1, 1988.

ADDRESS: Deputy General Counsel, Room 3000, 1500 Pennsylvania Avenue, NW., 20220.

FOR FURTHER INFORMATION CONTACT: William L. Murphy (202) 566-2327.

SUPPLEMENTARY INFORMATION: The intended effect of the proposed rule is to amend the Department's Minimum Standards of Conduct to: Make changes required by the Ethics in Government Act and Executive Order 12565 of September 25, 1986; amend and reorganize the Standards to make them more understandable; remove single gender pronouns; and clearly established authority and responsibility in matters related to the Standards. In addition, the proposed rule contains a waiver pursuant to 18 U.S.C. 208(b)(2) for financial interests "[T]oo remote or too inconsequential to affect the integrity of Government officers' or employees' services.".

Executive Order 12291 and Regulatory Flexibility Act

Because this proposed rule relates solely to the internal management, operations, and personnel of the Treasury Department, Executive Order 12291 does not apply and a regulatory impact analysis is not required. For similar reasons, and although the Department is soliciting public comments, no notice of proposed rulemaking is required by 5 U.S.C. 553 or any other law. Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply and a regulatory flexibility analysis is not required.

Drafting Information

The principal author of these regulations is Mr. William L. Murphy, Senior Counsel, Department of the Treasury. Other present and former personnel in the Treasury Department participated in the development of the regulations, both as to substance and style.

List of Subjects in 31 CFR Part 0

Standards of conduct.

D. Edward Wilson, Jr.,
Acting General Counsel.

31 CFR Subtitle A is amended by revising Part 0 to read as follows:

PART 0—STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec.
0.735–1 Purpose.
0.735–2 Scope.
0.735–3 Policy.
0.735–4 Definitions.

Responsibilities

0.735–5 Assignment of responsibilities.
0.735–6 Department.
0.735–7 The Department's counselor.
0.735–8 Deputy counselor.
0.735–9 Role of personnel officers.
0.735–10 Bureaus.
0.735–11 Supervisors.
0.735–12 Employees.

Subpart B—Rules of Conduct

Conflicts of Interest Statutes

0.735–20 General.
0.735–21 Summary of provisions of criminal code which define conflicts of interest.

Rules of Conduct

0.735–30 Proscribed actions; responsibilities.
0.735–31 Political activity.
0.735–32 Strikers.
0.735–33 Gifts or gratuities from Government employees.
0.735–34 Gifts or gratuities from outside sources.

Sec.
0.735–35 Gifts or gratuities from foreign governments.
0.735–36 Outside financial interests.
0.735–37 Using official designation.
0.735–38 Purchase of Government property.
0.735–39 Outside employment and other outside activities.
0.735–40 Teaching, writing, lecturing, and speechmaking.
0.735–41 Gambling, betting, and lotteries.
0.735–42 Use of intoxicants; controlled substances.
0.735–43 Indebtedness; tax obligations.
0.735–44 Care of documents.
0.735–45 Lending or borrowing money.
0.735–46 Use of Government cars.
0.735–47 Disclosure of information to the public.
0.735–48 Giving testimony.
0.735–49 Personal communications.
0.735–50 Use of Federal property.
0.735–51 Conduct while on official duty or on Government property.
0.735–52 Influencing legislation or petitioning Congress.
0.735–53 Soliciting, selling, and canvassing.
0.735–54 Office of Personnel Management examination processes.
0.735–55 Falsification of official records.
0.735–56 Miscellaneous statutory provisions.
0.735–57 General conduct prejudicial to the Government.
0.735–58 Nondiscrimination.
0.735–59 Possession of weapons and explosives.
0.735–60 Privacy Act.

Subpart C—Confidential Statement of Employment and Financial Interest

0.735–90 General.
0.735–91 Criteria for designation of employees required to submit confidential statements.
0.735–92 Exceptions.
0.735–93 Grievances; form and content of statements.
0.735–94 Time and place for submission of employees' initial statements.
0.735–95 Annual statements.
0.735–96 Interests of employees' relatives.
0.735–97 Information not known by employees.
0.735–98 Information excluded.
0.735–99 Review of statements.
0.735–100 Confidentiality of employee's statements.
0.735–101 Effect of employees' statements on other requirements.

Subpart D—Executive Personnel Financial Disclosure Requirements

0.735–150 General.
0.735–151 Procedure.
0.735–152 Penalties.
0.735–153 Supplemental information.
0.735–154 Exemptions from filing.
0.735–155 Ethics agreements.

Subpart E—Special Government Employees

Conflict of Interest Statutes

0.735–210 Applicability of 18 U.S.C. 203 and 205.
0.735–211 Applicability of 18 U.S.C. 207.
0.735–212 Applicability of 18 U.S.C. 208.

Rules of Conduct

Sec.
0.735–215 Applicability of Subpart B of this part.

Consultants and Advisers

0.735–220 Advice on rules of conduct and conflicts of interest statutes.
0.735–221 Industry, labor, agricultural, and other representatives.

Procedures to be Followed in the Department

0.735–230 Information and assistance to special Government employees and their supervisors.
0.735–231 Disclosure of financial interests.
0.735–232 Service with other Federal agencies.
0.735–233 Resolution of cases involving a conflict or apparent conflict of interest.
0.735–234 Legal interpretation.
0.735–235 Safeguarding information.

Subpart F—Employees Stationed in Foreign Countries

General Provisions

0.735–300 Purpose.
0.735–301 Policy.
0.735–302 General provisions governing conduct in foreign countries.

Additional Rules of Conduct

0.735–310 Basic rule of conduct.
0.735–311 Applicability to American employees.
0.735–312 Applicability to members of families.
0.735–313 Expression of thoughts and views.
0.735–314 Political activities.
0.735–315 Acceptance of employment by a member of a family.
0.735–316 Sale of personal automobiles and other personal property.

Advice and Counseling

0.735–320 Responsibility for guidance and assistance.

Authority: 5 U.S.C. 301, 5 U.S.C. 7301, E.O. 11222, 18 U.S.C. 208, 5 CFR Part 735.

Subpart A—General Provisions

§ 0.735–1 Purpose.

This part describes the standards of conduct required of all Department of the Treasury employees. The regulations in this part implement the Office of Personnel Management regulations (5 CFR Part 735) in accordance with Executive Order 11222, as amended. The standards of conduct in this part are not to be considered all inclusive and may be supplemented by the Department and bureaus to meet specific needs. The absence of a specific published standards of conduct covering an act tending to discredit an employee or the Department does not mean that such an act is condoned, is permissible, or would not call for and result in corrective or disciplinary action.

§ 0.735–2 Scope.

This part covers the following subject areas: (a) Subpart A of this part applies to all regular and special Government employees of the Department of the Treasury. It sets the general policy and definitions to be applied in interpreting the Department's Minimum Standards of Conduct and allocates responsibility in implementing these standards;

(b) Subpart B of this part summarizes the principal conflict of interest statutes and defines rules of conduct and procedures for all regular employees;

(c) Subpart C of this part contains rules concerning confidential financial disclosure;

(d) Subpart D of this part contains rules concerning public financial disclosure by Executive Personnel;

(e) Subpart E of this part applies to special Government employees and advisers;

(f) Subpart F of this part sets forth additional rules and guidelines applicable to employees stationed in foreign countries.

§ 0.735–3 Policy.

(a) Executive Order 11222 of May 8, 1965, as amended, (18 U.S.C. 201 note), states the basic philosophy of conduct for those who carry out the public business:

Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of their government. Each individual officer, or adviser of government must help to earn and must honor that trust by his [or her] own integrity and conduct in all official actions.

(b) Personnel of the Department of the Treasury are expected to adhere to the above stated principles and to Standards of behavior that will reflect credit on the Government. The Department's position is that of having confidence in its employees and of taking a positive and reasonable approach to the matter of maintaining the high standards of conduct necessary in the transaction of Treasury activities. Those few employees who violate the laws or the rules or regulations on conduct in this part will be disciplined in accordance with the gravity of the offenses committed.

(c) Disciplinary action may be in addition to any penalty prescribed by law. If disciplinary or other remedial action is necessary, it will be taken only after consideration of the explanation of the employee and will be effected in accordance with applicable laws and regulations. Remedial action may include, but is not limited to:

(1) Changes in assigned duties.

(2) Disqualification for a particular assignment.

(3) Divestment by the employee of his or her conflicting interest.

(4) Disciplinary action.

§ 0.735–4 Definitions.

In this part: (a) "Regular employee" or "employee" means an officer or employee of the Department of the Treasury, but does not include a special Government employee.

(b) "Special Government employee" means an officer or employee of the Department of the Treasury, or an employee detailed from another agency to the Department, who is retained, designated, appointed, employed, or detailed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(c) "Adviser" means a person who provides advice as a representative of an outside group and not as an employee or special Government employee.

(d) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

Responsibilities

§ 0.735–5 Assignment of responsibilities.

The assignment of responsibilities to carry out the provisions of this part is described below in § 0.735–6—§ 0.735–12.

§ 0.735–6 Department.

The Department's responsibilities are to (a) issue policy and basic standards of conduct applicable to all Treasury employees, (b) periodically review the basic standards issued and to review initially and periodically those additional standards issued by the bureaus, (c) set requirements to insure that supervisors and employees are aware of the standards of conduct, of their responsibilities in maintaining and adhering to those standards and of the fact that disciplinary action will be taken in cases of failure to maintain or adhere to them, and (d) establish procedures for furnishing advice to management and to employees on the application of standards of conduct.

§ 0.735–7 The Department's counselor.

The Deputy General Counsel is the Ethics Counselor for the Department on matters covered by the regulations in this part. In addition, the Deputy General Counsel is the Department's Designated Agency Ethics Official (DAEO) for the purposes of the Ethics in Government Act, as amended. There will be an Alternate Designated Agency Ethics Official and such Deputy Designated Ethics Officials as the Deputy General Counsel appoints. The Deputy General Counsel is responsible for coordination of the counseling service within the Department and for interpretations on questions of conflicts of interest and other matters under this part. This includes providing the guidance required by section 206(b)(7) of the Ethics in Government Act.

§ 0.735–8 Deputy counselors.

The Chief Counsel or Legal Counsel for each bureau, or his or her designee, is the Deputy Counselor for that bureau. As such, his or her responsibility is to give authoritative advice and guidance on conflicts of interest and other matters covered by this part.

§ 0.735–9 Role of personnel officers.

(a) Personnel officers at all organizational levels are responsible for providing general guidance and assistance to supervisors and employees in implementing and adhering to the provisions of the regulations in this part. Where questions arise or where advice is sought by other supervisors or employees which involve either advice or interpretation which is legal in nature, personnel officers will be responsible for seeing that the advice or interpretation is sought or obtained from the Deputy Counselor or the Counselor, as appropriate. Personnel officers will ensure that a briefing is given to all new employees on the rules in this part and the statutory provisions summarized in § 0.735–21. These officers will further ensure that all departing employees are briefed on the applicable post employment restrictions of 18 U.S.C. § 207, 5 CFR Part 737, this part and other applicable restrictions.

(b) The Department's Director of Personnel will issue a directive detailing implementation of this requirement.

§ 0.735–10 Bureaus.

The responsibilities of the bureau are to

(a) Provide employees with basic standards of conduct and any additional standards and explanations necessary to effectively carry out the policy of the President and of the Department,

(b) See that employees and supervisors are aware of their responsibilities in maintaining and adhering to established standards of conduct,

(c) Inform employees as to how and from whom they may get additional clarification of standards of conduct and related laws, rules, and regulations,

(d) Advise employees of the location or availability of regulations governing conduct in and on Treasury buildings and grounds (§ 0.735–51),

(e) Insure that appropriate disciplinary action is taken against employees who violate standards of conduct and related laws, rules and regulations and against supervisors who fail to carry out their responsibilities in taking or recommending disciplinary action when appropriate against employees under them who have committed such offenses, and

(f) Review and evaluate the effectiveness of standards issued and their application. **Note:** Bureaus shall provide employees with copies of the regulations in this part and will require a written receipt from each employee. New employees shall be given copies of the regulations in this part at the time of their employment. All employees will be periodically reminded of timely restrictions (such as the requirement to promptly file and pay tax during the tax season, political restrictions during election campaigns, etc.) as well as continually educated concerning these rules. This may be done by posting the standards on the bulletin board, by reminders in house organs or by other forms of written communications, including payroll inserts. In addition, employees will be reminded annually of their obligation to follow the standards of conduct.

§ 0.735–11 Supervisors.

It is the responsibility of each supervisor to

(a) Know the standards of conduct applicable to him or her and the employees under his or her supervision,

(b) Advise the employees under his or her supervision or help them obtain advice on the application of the standards of conduct,

(c) Adhere to them,

(d) See that the employees under his or her supervision know and adhere to them also, and

(e) Take or recommend disciplinary action when appropriate in cases where the employees under his or her supervision violate the standards or the principles upon which they are based.

§ 0.735–12 Employees.

(a) Each employee in the Department is required to:

(1) Know the standards of conduct and their application in his or her case,

(2) Seek information from his or her supervisor in case of doubt or misunderstanding on the application of the standards of conduct,

(3) Adhere to the standards of conduct, and

(4) Be aware of the consequences of violation of the laws, rules and regulations regarding conduct.

(b) Any employee who has information indicating that another employee engaged in any criminal conduct or violated any of the rules of these Standards of Conduct shall promptly convey such information to the Inspector General or to the appropriate internal affairs office of the Bureau of Alcohol, Tobacco and Firearms; U.S. Customs Service; Internal Revenue Service; or U.S. Secret Service. (An attorney in the Legal Division who obtains such information during the course of representation shall instead report to the appropriate Chief or Legal Counsel or the Deputy General Counsel.) The confidentiality of the source of such report will be maintained in a manner appropriate to the circumstances of the case.

(c) Employees shall report information of the type discussed in paragraph (b) of this section related to foreign intelligence or other information of the type covered by Executive Order 12356 to the Inspector General except that Legal Division attorneys who gain information during representation shall report this to the Deputy General Counsel.

Subpart B—Rules of Conduct

Conflict of Interest Statutes

§ 0.735-20 General.

The elimination of conflicts of interest in the Federal service is one of the most important objectives in establishing general standards of conduct. A conflict of interest situation may be defined as one in which a Federal employee's private interest, usually of an economic nature, conflicts or raises a reasonable question of conflict with his or her public duties and responsibilities. The potential conflict is of concern whether it is real or only apparent. In addition to the conflict of interest statutes, summarized in § 0.735-21, the Department has rules concerning conflicts of interest that appear in §§ 0.735-34, 0.735-35, 0.735-36, and 0.735-39.

§ 0.735-21 Summary of provisions of criminal code which define conflicts of interest.

The following is a brief summary of the provisions of the criminal code, 18 U.S.C. 201 et seq., which define the conflicts of interests which are subject to fine and imprisonment. These provisions have been interpreted by the Attorney General in a memorandum distributed to Heads of Departments and Agencies, dated January 28, 1963, 28 FR 985 and published in a note following 18 U.S.C. 201. Specific examples of the application of the post-employment restrictions are provided by the Office of Government Ethics in 5 CFR Part 737. It should be noted that lesser prohibitions apply to special Government employees than to regular employees as indicated in Subpart E of this part.

(a) *18 U.S.C. 203.* Section 203 prohibits an employee from receiving, agreeing to receive or asking for, directly or indirectly, any compensation for services, otherwise than as provided by law, rendered by the employee or another in relation to any matter in which the United States is a party or has a substantial interest, before any Department or agency (for example: Any Government employee's acceptance of compensation for Federal tax representation is prohibited, whether the employee provided the representation or not).

(b) *18 U.S.C. Section 205.* Section 205 prohibits an employee from (1) acting as an agent or attorney in prosecuting any claim against the United States or receiving any share or interest in such claim for assistance in its prosecution, or (2) acting as an agent or attorney for anyone before any Department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest. This section does not prohibit a regular Government employee from acting with official approval and with or without compensation as agent or attorney for his or her parents, spouse, child or any person for whom, or for any estate for which, he or she is serving as guardian or other fiduciary, with certain exceptions set forth in that section. (See § 0.735-39 for Departmental restrictions.) The provisions of this section and section 203 do not prevent an employee, if not inconsistent with the faithful performance of his or her duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty or other personnel administration matter in connection with such matter.

(c) *18 U.S.C. 207(a).* Section 207(a) prohibits a former employee at any time after his or her employment has ceased, from acting as agent or attorney (including making any oral or written communications with the intent to influence) for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he or she participated personally and substantially as an employee.

(d) *18 U.S.C. 207(b)(i).* Section 207(b)(i). Section 207(b)(i) prohibits any such former Government employee within two years after his or her employment from acting as an agent or attorney for, or otherwise representing (including making an oral or written communication with the intent to influence) anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested and which was under his or her official responsibility within one year prior to the termination of such responsibility.

(e) *18 U.S.C. 207(b)(ii).* Section 207(b)(ii) imposes an additional restriction which applies only to "Senior Employees." All executive level employees, together with those in Senior Executive Service who have been designated in 5 CFR 737.33 are "Senior Employees." A former "Senior Employee" may not aid or assist in representing by personal presence at a formal or informal appearance for a period of two years after employment with respect to any particular matter in which the employee would be prohibited from personally representing by Section 207(a) on account of personal and substantial participation as a Government employee.

(f) *18 U.S.C. 207(c).* Section 207(c) prohibits a former "Senior Employee" from acting as an agent or attorney for anyone other than the United States, or making an oral or written communication with the intent to influence, in any particular matter (but not necessarily involving a specific party or parties) before or to the employee's former agency for one year after employment. Certain Treasury components have been designated as "separate agencies" for purposes of this rule in 5 CFR 737.31. However, heads of these components may not take advantage of this separate agency designation and are barred from appearing before the Department as a whole. Similarly, those who supervise a component even though not part of it may not avail themselves of the designation.

(g) *18 U.S.C. 208.* Section 208 prohibits any employee from participating personally and substantially as a Government employee in any particular matter in which to his or her knowledge the employee, the employee's spouse, minor child, partner, organization in which the employee is serving as an officer, director, trustee, partner or

employee, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest. An employee may be exempted from the provision of this section if he or she makes full disclosure of the financial interest to the official responsible for his or her appointment and receives in advance a written determination by that official that the interest is not so substantial as to be likely to affect the integrity of that employee's service. (For example: an auditor who owns stock in a company may not perform an audit of that company and an attorney working on a matter involving a company may not negotiate for employment with the law firm representing the company.) *See* § 0.735–37 for specific rules relating to negotiating employment. *See* § 0.735–36(e) for a general exemption of certain financial interests from the scope of this prohibition. Exemptions from the prohibition of section 208 may be made by general rule or regulation pursuant to sention 208(b)(2). Specific exemptions pursuant to section 208(b)(1) may be made

(1) For employees in the Departmental Offices by a superior official not lower than Deputy Assistant Secretary;

(2) For employees in bureaus by an official designated by the bureau head (this authority should not be delegated lower than the equivalent of Deputy Assistant Secretary); and

(3) For employees in the Legal Division by the Chief or Legal Counsel or Deputy General Counsel.

(h) *18 U.S.C. 209.* Section 209 prohibits any employee from receiving any salary or any contribution to or supplementation of salary as compensation for services as an employee from any source other than the Government. This section does not apply to a special Government employee, and does not prevent participation in any bona fide pension, retirement, profit sharing, or other welfare or benefit plan maintained by a former employer. This section also does not prohibit payment or acceptance of certain contributions, awards or expenses in connection with Government employee training programs or attendance at meetings authorized under 5 U.S.C. 4101–4118. In addition, payments by state or local government and relocation expenses paid to White House fellows or participants in executive exchange programs may be accepted.

Rules of Conduct

§ 0.735–30 Proscribed actions; responsibilities.

(a) An employee shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the government.

(b) An employee shall not unlawfully disclose personal information with respect to an individual which information has been obtained in the course of the employee's official duties.

(c) Employees may express their personal views on assigned matters to their immediate supervisors. Nevertheless, they are required to implement authorized decisions of their supervisors.

(d) Employees are expected to be courteous and tactful in their official relations with the public.

§ 0.735–31 Political activity.

Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates, but are forbidden to take active part in political management or campaigns (5 U.S.C. 7324). Political activity in some local elections is permissible; but before employees engage in such activity, they should familarize themselves with the statutory provisions and the Office of Personnel Management's regulations on this subject (5 U.S.C. 7324–7327 and 5 CFR Part 733). It is unlawful for employees to solicit, receive or to be concerned with political assessments, subscriptions, or contributions for any political purpose whatever from other employees (5 U.S.C. 7323). Employees may not make contributions to an officer or employee of the Government who is the employer or employing authority of the contributing employee, or to an authorized committee of that officer or employee (18 U.S.C. 603). Employees may be disqualified from employment for knowingly supporting or advocating the violent overthrow of our constitutional form of government (5 U.S.C. 7532 and E.O. 10450, as amended).

§ 0.735–32 Strikes.

Employees shall not strike against the Government (5 U.S.C. 7311)

§ 0.735–33 Gifts or gratuities from Government employees.

(a) Employees of the Federal Government are prohibited from soliciting contributions from other employees for gifts or presents to persons in superior official positions. Neither may such superiors receive any gift or present offered to them from employees in the Government receiving less salary than themselves (5 U.S.C. 7351).

(b) Collections of spontaneous origin may be made for voluntary token gifts on special occasions, such as marriage, retirement, resignation or for expressing condolences in cases of illness or death. Solicitations for such gifts should be limited to employees in the immediate office of the employee concerned and a few close associates with whom he or she has worked. However, supervisors may not solicit contributions from an employee under their supervision under any circumstances. In no case should general solicitations be made for a gift, nor should gifts to the recipients be in cash, except that small amounts (*e.g.*, under $20) remaining after the purchase of a gift may be included with the gift. A collection may be made, in accordance with the limitations set forth in paragraphs (a) and (b) of this section, with supervisory approval, for a cash gift to assist in a catastrophic illness or disaster, provided that these collections are limited to coworkers of approximately equal status to the recipient employee, and to his or her immediate supervisors.

(d) Employees must not be placed under pressure for personal contributions and the solicitor must make it clear to all prospective contributors that contributions are voluntary.

§ 0.735–34 Gifts or gratuities from outside sources.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(i) Has, or is seeking to obtain, contractual or other business or financial relations with the Department of the Treasury,

(2) Conducts operations or activities that are regulated by the Department, or

(3) Has interests that may be substantially affected by the

performance or non-performance of his or her official duty.

(b) General exceptions to the rule in paragraph (a) of this section are as follows unless otherwise precluded by heads of bureaus:

(1) Acceptance of gifts, entertainment, and food is proper when circumstances make it clear that obvious family or personal relationships (such as those between the parents, children, friends or spouse of the employee and the employee), rather than the business of the persons concerned, are the motivating factors. (Friends for purposes of this rule are those with whom the employee has a long standing or close personal relationship.)

(2) Acceptance of food and refreshments of nominal value in the course of a luncheon or dinner meeting is permitted, provided there is no pattern of accepting such food and refreshments from a single source.

(3) If food or refreshments are received under circumstances that preclude immediate payment without embarrassment, and the acceptance is not otherwise authorized, it will be permitted to be accepted, but only if, within a reasonable period of time, the employee actually reimburses the host or has made a good faith effort to reimburse a host who will not accept reimbursement.

(4) Employees may accept gifts, the personal receipt of which is prohibited by these rules, where under the immediate circumstances, refusal would create embarrassement if:

(i) The employee promply turns the gift over to the Departmental Gift Unit (or as specified in bureau directive) for return or other appropriate disposition; or

(ii) The employee directly returns the gift or writes a brief letter to the donor adivising that Department rules do not permit the employee to accept the item. The employee will then submit the letter and the gift item to his or her supervisor who will arrange for mailing the letter and returning the gift item to the donor at Government expense.

(5) Employees may accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans, except where prohibited by law or regulation.

(6) Employees may accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars and other items of nominal intrinsic value. Employees may accept discounts afforded to government employees as a whole, or to other groups of which the employee is a part, except when the entity is one which has business dealings with or is regulated by the employee's bureau.

(c) Paragraphs (a) and (b) of this section also apply to an employee who consents to the acceptance of any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value by a person other than that employee, under circumstances which might reasonably be construed as influencing or improperly relating to past, present, or future performance of the employee's governmental duties.

(d) The receipt of payment or reimbursement by outside sources for the expenses of travel and subsistence for activities related to Government employment is permitted only in accordance with § 0.735–40.

(e) This section is not an attempt to classify all possible situations involving gifts or gratuities from outside sources. It is presented to assist management and employees in interpreting the rule and applying it. Cases must be judged on their individual merits. Employees must exercise sound judgment to comply with the intent of the rule. For example, acceptance of a gift permitted under paragraph (b) of this section might be inappropriate in certain circumstances. If there is any reasonable doubt about accepting a gift or gratuity, the employee should submit his or her questions in writing to the immediate supervisor and obtain a written opinion as to whether acceptance of the gift or gratuity is permissible under the rules of conduct.

§ 0.735–35 Gifts or gratuities from foreign governments.

(a) The Constitution prohibits employees from accepting from foreign governments, except with the consent of the Congress, presents, emoluments, offices, or titles. The Congress has given its consent in 5 U.S.C. 7342 to the acceptance of certain specified gifts and decorations. Employees may retain gifts of minimal value (as prescribed in 41 CFR Part 101–49, presently $180.00) meant as a souvenir or mark of courtesy if not prohibited by agency regulations. Employees may accept gifts of greater value if refusal would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States so long as these gifts are deposited with the Department within sixty days.

(b) Minimal value for foreign govenment gifts to Treasury employees is $180.00 (or such higher amount established in 41 CFR Part 101–49).

(c) All gifts in excess of minimal value, the refusal of which would likely cause offense or embarassment or otherwise adversely affect the foreign relations of the United States, may be accepted and deposited with the Department within sixty days of acceptance.

(d) Deposit with the Department means delivery to the Departmental Gift Unit or other deposit authorized in the current Treasury Directive on Foreign Gifts.

(e) Any foreign gift must be reported as prescribed in the current Treasury Directive on Foreign Gifts.

§ 0.735–36 Outside interests.

(a) An employee shall not: (1) Have a direct or indirect financial interest that may reasonably be expected to be in conflict, or appears to be in such conflict, with his or her Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his or her employment with the Department.

(b) Any employee who has a financial or other interest which may be affected by a matter to which the employee is assigned, shall promptly notify his or her supervisor of the potential conflict of interest. The supervisor is responsible for ensuring that the employee does not work on any matter which would create a conflict of interest (other interests which might require disqualifications include membership in a non-profit organization, financial interest of friends or relatives in a matter, and the like). Employees should consult with the Ethics Counselor or supervisor in case of doubt.

(c) An employee who is negotiating for, or has an arrangement concerning, prospective employment may not participate in a matter in which the prospective employer has a financial interest. Financial interest for this rule includes an indirect interest, such as when the prospective employer is representing a client which has a direct interest in the matter. To assist employees, the following rules apply to employment negotiating situtations:

(1) An arrangement for employment includes a tacit agreement to return to a former employer.

(2) A negotiating situation exists either during active negotiation, where an employee solicits employment, or where an employee does not promptly reject an unsolicited offer of employment.

(3) The types of matters which the employee must refrain from participating in include not only particular matters, such as individual cases, but general matters such as drafting of regulations which would

have a direct and predictable impact on the prospective employer.

(4) Employees should promptly notify their supervisor in writing of all employment arrangements and negotiations with an individual or organization which has financial interests actually or potentially affected by any matter on which the employee is working unless advised by an Ethics Counselor that a given negotiation need not be reported.

(d) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order 11222, as amended, this part, or other regulations or directives.

(e) Pursuant to 18 U.S.C. 208(b)(2), the following financial interests are deemed to be too remote and inconsequential to affect the integrity of employee's services. Therefore, an employee will not be in violation of section 208(a) for participating in a matter in which he or she has one of the following interests. However, employees should refrain from participating in matters notwithstanding this waiver if such participation would result in an improper appearance. The interests subject to this waiver are:

(1) Stock or bonds of publicly traded corporations with a value of $1,000 or less;

(2) Stocks or bonds in the investment portfolio of a diversified mutual fund in which an employee has invested.

§ 0.735–37 Using official designation.

Employees shall not permit their official position, status or designation to be used in a manner that is intended to further, or gives the appearance of furthering, the private, financial or business interests of the user.

§ 0.735–38 Purchase of Government property.

(a) Employees are prohibited from, either directly or indirectly, bidding or purchasing at any sale of property either owned by the Government and under the control of the Department or seized and sold under the direction of a bureau of the Department of the Treasury. If the property is sold by a bureau other than an employee's, and the employee exercises no supervision over the selling bureau, sale to the employee is controlled by paragraph (b) of this section.

(b) Government property under the control of the Department, but not included in paragraph (a) of this section, shall not be sold to a Government employee, either directly or indirectly, unless a properly authorized representative of the bureau or office disposing of the property has determined that the sale is in the best interest of the Government. (Except, that a foreign gift deposited with the Department may be purchased by the donee employee pursuant to 5 U.S.C. 7342 and 41 CFR Part 101–49.)

(c) Before purchasing any Government property, not included in paragraphs (a) or (b) of this section, from any agency of the Government, either directly or indirectly, employees of the Department shall make known to the disposing agency that they are such employees. Employees are permitted to purchase such property unless prohibited by the disposing agency's rules. If the disposing agency's rules defer to the employing agency rules, the procedures in paragraph (b) of this section shall apply to purchase by Treasury employees.

(d) This section does not apply to items sold generally to the public at fixed prices, such as Mint numismatic products.

§ 0.735–39 Outside employment and other outside activities.

(a) Employees shall not engage in any outside employment or other outside activities with or without compensation, which (1) interfere with the efficient performance of official duties, (2) might bring discredit on or cause unfavorable and justifiable criticism of the Government, (3) might reasonably result in a conflict of interest, or an apparent conflict of interest, with official duties and responsibilities, or (4) might result in the unauthorized use or disclosure of classified or sensitive information.

(b) Bureau heads will establish appropriate instructions to meet their peculiar needs in regard to outside employment and other outside activities of their employees. These instructions will require employees to obtain written permission from appropriate approving officials. All approvals should be reviewed annually. To simplify administration of this rule, bureaus may include in their instructions criteria not inconsistent with the regulations in this part which provide for outside activities which are clearly permissible and would normally not require written permission. Bureaus will retain in employees' Official Personnel Files all requests whether granted or not. In addition, Bureaus will retain a separate file of all requests and approvals for the use of the counselor and deputy counselors.

(c) Employees of the Departmental Offices must obtain written permission to engage in outside employment or business activities for compensation. Reimbursement of reasonable travel and lodging expenses (reasonable expenses are those for which an employee could be reimbursed for official travel under the travel regulations) to attend meetings of charitable, civic, and professional organizations may be accepted without written permission.

§ 0.735–40 Teaching, writing, lecturing, and speechmaking.

(a) *General Rule.* Employees may teach, write, lecture, or deliver speeches to the degree permitted in these regulations so long as such activities are not prohibited by law, Executive Order 11222, or 5 CFR Part 735.

(b) *Activities not dependent on information obtained as a result of Government employment or related to Treasury Department business.* An employee may teach, write, lecture or speak on matters unrelated to Treasury business which do not draw on information the employee obtained as a result of Government employment, subject to the limitations and approvals of § 0.735–39.

(c)(1) *Activities dependent on information obtained as a result of Government employment or related to Treasury Department business.* An employee may teach, write, lecture, or speak where such activities are dependent on information the employee obtained as a result of Government employment, or related to Treasury Department business in accordance with the following procedures.

(2) *Use or release of non-public information.* An employee may not use or release in a teaching, writing, lecturing, or speechmaking activity (whether as an official duty or in a private capacity) information gained as a result of Government employment which has not been made available to the general public, or will not be made available on request, unless the appropriate approving official gives written authorization for such use or release based upon a determination that such use or release is in the public interest.

(3) *Activities undertaken as an official duty.* An employee may seek to engage in teaching, writing, lecturing, or speechmaking as an official duty. If consistent with the proper expenditure of public funds, such activities may be permitted as official duties. Approval of the activity by the employee's supervisor and the content of the teaching, writing, lecturing or speechmaking engagement by the appropriate approving official is required. If undertaken as an official duty, all expenses are to be borne by the Treasury Department and the employee

may receive no other compensation or reimbursement. However, the employee may, under 5 U.S.C. 4111 and 5 CFR Part 410, accept reimbursement for actual travel and reasonable lodging and subsistence expenses from organizations determined by the Secretary to be tax exempt as described in 26 U.S.C. 501(c)(3) or from state, county or municipal governments, if no U.S. Government payment or reimbursement is made for the expense, and the acceptance of the payment is consistent with the Department's policy of eliminating any conflict of interest or appearance of a conflict of interest with his or her official duties and responsibilities. While an employee may incur additional expenses, no reimbursement of such excess is permitted except by a person who:

(i) Is a relative or close personal friend, and

(ii) Makes such payment solely from personal funds. Any payment or reimbursement shall be subject to the rules of this part pertaining to gifts and gratuities.

Subject to these same limitations and approval requirements, reimbursement for reasonable travel expenses of a spouse or traveling companion who accompanies the employee may be accepted.

(4) *Activities undertaken in a private capacity.* (i) An employee may teach, write, lecture, or speak on matters related to Treasury Department business or which will draw from information gained while a Government employee (subject to paragraph (c)(2) of this section if nonpublic information is involved) in a private capacity subject to the following limitations:

(A) An advance copy or outline (such as course outline) of any speech, writing, etc., must be given to the appropriate approving official who may disapprove the presentation;

(B) The employee may not use his or her official title without specific written approval by the appropriate approving official. An example where approval is normally appropriate is where the employee's Government position is referred to in biographical information provided in conjunction with the outside activity; and

(C) The employee may not utilize Government time or facilities to prepare the presentation or submission. Acceptance of honoraria is discouraged.

(ii) If an honorarium or other compensation is to be received, specific written approval is required under § 0.735–39. (Presidential appointees shall obtain personal written approval of the Secretary).

(iii) If an honorarium or other compensation is not to be received, further approval is not needed, unless required by § 0.735–39 or bureau regulations.

(iv) Employees may accept payment for travel, lodging, and subsistence expenses actually incurred from the person or group sponsoring an activity determined not to be an official duty, if the payment is reasonable in amount and otherwise consistent with the Department's policy to eliminate any conflict of interest or appearance of a conflict of interest with the official duties and responsibilities of the employee. Presidential appointees shall obtain the personal written approval of the Deputy Secretary or Secretary before accepting any such payment. An employee may incur excess expenses not reimbursable under this subsection. Payment or reimbursement of such expenses is permitted by a person who:

(A) Is a relative or close personal friend,

(B) makes such payment solely from personal funds, provided

(C) That such payment is in accordance with the rules of this part pertaining to gifts and gratuities.

Payment of these excess expenses by anyone other than a relative or close personal friend requires approval as compensation under paragraph (c)(4)(ii) of this section.

(5) Reporting requirements. All employees receiving compensation or reimbursement for expenses for teaching, writing, lecturing, or speechmaking devoted to the responsibilities, programs or activities of the Department, or drawing upon official data or ideas which have not been made public, shall immediately submit a written report to the appropriate approving official stating the amounts paid and by whom, unless this information was previously provided to that official. In addition, the employee may be required by the appropriate approving official to furnish other relevant information concerning these payments.

(6) Other Restrictions. (i) Under 5 CFR 735.203(c), the Secretary of the Treasury may not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Treasury Department, or which draws substantially on official data or ideas which have not been made public.

(ii) Under 2 U.S.C. 441i, employees are prohibited from receiving honoraria of more than $2,000 for any appearance, speech, or article;

(iii) Under 5 U.S.C. App. (section 210 of the Ethics in Government Act of 1978, Pub. L. 95–521) all employees who are compensated at a pay grade in the General Schedule of grade 16 or above and who occupy full-time positions appointment to which is required to be made by the President, by and with the advice and consent of the Senate, may not have outside earned income which is in excess of 15 percent of their salary in any calendar year.

(d) For purposes of this section the "appropriate approving official" shall be in the case of employees within a bureau, the bureau head or deputy; in the case of the employees within an office, the office head or deputy; and in the case of a bureau office head, the official who directly supervises the bureau or office head to whom such official reports pursuant to Treasury Department Order No. 101–5. (This authority may be delegated in writing).

(e) Treasury employees are prohibited from official attendance at segregated meetings. They may not participate in conferences or speak before audiences where any racial group has been segregated or excluded from the meeting, from any of the facilities or the conferences, or from membership in the group.

§ 0.735–41 Gambling, betting, and lotteries.

(a) Except as provided for in paragraph (c) of this section an employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any form of illegal gambling, betting, lotteries or the sending of chain letters, even if such activities are in support of a worthy cause.

(b) Possession on Government-owned or leased premises of any numbers slip or ticket, record, notation, receipt or other writing of a type ordinarily used in any illegal form of gambling, such as tip sheet or dream book, unless explained to the satisfaction of the head of the bureau or his delegate, shall be prima facia evidence that the employee is participating in an illegal form of gambling on such premises.

(c) This section does not preclude:

(1) Activities necessitated by an employee's law enforcement duties; or

(2) Purchase of lottery tickets sold on Government-owned or leased property by blind vendors, as provided for in the Randolph Sheppard Act (20 U.S.C. 107a(a)(5)) except in those states or localities where gambling is prohibited

by statute, ordinance or other applicable laws.

§ 0.735–42 Use of intoxicants; controlled substances.

(a) Employees must refrain from using intoxicants or controlled substances habitually, to excess or in any way which adversely affects their work performance. In addition, employees are forbidden from engaging in the illegal sale, use or possession of controlled substances while on Department premises or on official duty.

(b) Employees in violation of paragraph (a) of this section may be subject to disciplinary action up to and including dismissal.

(c) In addition, each employee should be aware that any use of intoxicants or controlled substances found to be prejudicial to the Government may subject that employee to disciplinary action. See § 0.735–58.

§ 0.735–43 Indebtedness; tax obligations.

(a) Employees shall not without good reason fail to maintain good credit and a reputation for prompt settlement of their just financial obligations in a proper and timely manner. They are expected to manage their private financial affairs in a manner which will not cause embarrassment to the Treasury Department. This particularly includes just financial obligations to Federal, State, and local governments for taxes as well as private concerns and individuals. A "just financial obligation," as used in this section, means one acknowledged by the employee; reduced to judgment by a court; or, in the case of taxes, as provided by paragraph (b) of this section. "In a proper and timely manner," as used in this section, means in a manner which the Department determines does not, under the circumstances, reflect adversely on the Department as his or her employer. In the event of disputes between an employee and an alleged creditor, this section does not require the Department to determine the validity or amount of the disputed debt.

(b) In accordance with the requirement in paragraph (a) of this section that employees pay their just financial obligations in a proper and timely manner, employees must timely pay any valid tax due to a Federal, State, or local government agency. A "valid tax due" as used in this paragraph includes:

(1) A balance due on an original return as filed with a government agency;

(2) An uncontested tax assessment of a government agency;

(3) A tax otherwise due a government agency which is acknowledged by the employee; and

(4) Absent paragraphs (b)(1), (2) or (3) of this section, a final administrative determination confirmed by notice of a tax lien issued by a government agency.

(c) In addition, it is expected that employees will file timely and properly all tax returns in keeping with the requirements of law, regulation or ordinance, whether or not a tax is due.

§ 0.735–44 Care of documents.

The care of Government documents is a Federal requirement which is regulated by legislation. All records and documents in the custody of employees are in their custody for official purposes only. It is unlawful to remove or conceal, alter, mutilate, obliterate or destroy records or documents or to remove or attempt to remove them from official custody with the intent of performing any of the above actions (18 U.S.C. 2071). Employees must not remove records and documents from official files without approval from proper authority. Working papers, copies of reports and other official records and documents shall be promptly sent to file when no longer needed for official purposes. Disposal or destruction of records and documents is to be made in accordance with established requirements. There are specific instructions relating to the safeguarding of classified or other sensitive information which are furnished to employees authorized to have access to such information. See further the regulations in Part 1 of this title which implement 5 U.S.C. 301, 552 and 552a governing the care and the disclosure of records in the Department of the Treasury; § 0.735–61 of this part; and see the relevant statutes and regulations, if any, issued by a bureau or office to which the record belongs.

§ 0.735–45 Lending or borrowing money.

Employees shall not, either directly or indirectly, lend to or borrow from other employees substantial sums of money. In negotiating loans from authorized sources, such as credit unions, welfare associations, commercial or private banking institutions, etc., if the transaction involves the signature of one or more endorsers or comakers, the borrower must not in any instance solicit, or permit to be affixed to any instrument as endorser or comaker, the signature of any Treasury employee who exercises supervision over that borrower, or over whom that borrower exercises supervision.

§ 0.735–46 Use of Government cars.

Employees are prohibited from using Government cars for other than official purposes. Use of such cars for transportation of employees between their domiciles and places of employment can only be justified where affirmatively authorized by statute, as in 31 U.S.C. 1344. Employees who violate this section shall be suspended from duty without compensation for not less than one month and may be suspended for a longer period or removed from office if circumstances warrant.

§ 0.735–47 Disclosure of information to the public.

Employees may not disclose official information without either appropriate general or specific authority under Department or bureau regulations. However, employees who are so authorized should make every effort to comply promptly and courteously with requests by the public for information, when permitted to do so by law. See further 31 CFR 1.9, 1.10, and 1.28(b).

§ 0.735–48 Giving testimony.

(a) When directed to do so by competent Treasury authority, employees must testify and respond to questions truthfully, under oath when required, concerning matters of official interest.

(b) The information provided by an employee pursuant to paragraph (a) of this section shall be furnished to authorized persons in the Department of the Treasury who have a need for the information in the performance of their duties.

(c) Failure to testify or respond to questions, or to give truthful answers, under oath when required, pursuant to paragraph (a) of this section, may subject employees to dismissal from Federal employment or other disciplinary or adverse action. Furnishing false information may also result in criminal prosecution.

(d) The authority for soliciting information pursuant to paragraph (a) of this section is granted in 5 U.S.C. 301 (Authorization of Agency Heads to Prescribe Regulations for their Departments); Executive Orders 10450 (Security Requirements For Government Employees) and 11222 (Prescribing Standards of Ethical Conduct For Government Officers and Employees); and 26 U.S.C. 7801 (Authority of the Secretary of the Treasury).

§ 0.735–49 Personal communications.

Employees may not conduct personal business while on official duty. Personal use of telephones is restricted to

essential need. Employees who receive personal mail at their office will advise addressers to stop sending such mail to the Department address.

§ 0.735–50 Use of Federal property.

Employees may not directly or indirectly use or allow the use of Federal property of any kind for other than officially approved activities. They also have a positive responsibility to protect and conserve all Federal property including equipment and supplies entrusted or issued to them.

§ 0.735–51 Conduct while on official duty or on Government property.

Employees must adhere to the regulations governing conduct in and on the Treasury Building, and Treasury Annex Building and grounds (Part 407 of this title); the Bureau of Engraving and Printing, and Bureau of Engraving and Printing Annex Building and grounds (Part 605 of this title); the Bureau of the Mint buildings and grounds located in Denver, Fort Knox, New York, Philadephia, San Francisco, and West Point (Part 91 of this title); the grounds of the Federal Law Enforcement Training Center (Part 700 of this title); and Treasury occupied General Services Administration buildings and grounds (41 CFR Subpart 101–19.3). In addition, each employee must refrain from acting in a manner unbecoming a Treasury employee, while on official duty or in government buildings.

§ 0.735–52 Influencing legislation or petitioning Congress.

Employees are prohibited from using Government time, money or property (as, for example, through sending telegrams or letters) to influence a Member of Congress to favor or oppose any legislation. This prohibition does not apply to the official handling through proper channels of matters relating to legislation affecting the Department of the Treasury (18 U.S.C. 1913). Employees have the right to petition Members of Congress either individually or collectively or to furnish information to any committee or member of either House of Congress (5 U.S.C. 7211) when not using Government time, money or property.

§ 0.735–53 Soliciting, selling, and canvassing.

Except when authorized by the head of the bureau, office or division concerned, and except as provided by § 0.735–33, employees are prohibited from soliciting, from making collections, from canvassing for the sale of any article or from distributing literature or advertising matter in any space occupied by Treasury.

§ 0.735–54 Office of Personnel Management examination processes.

Appointment and future advancement in the Federal career service are based on the important principle of individual merit and qualifications. The selection and merit competitive processes are protected by the Office of Personnel Management statutory provisions, 5 U.S.C. chapter 33 and the Office of Personnel Management regulations. Employees shall not participate either directly or indirectly in any of the following actions:

(a) Intentionally make a false statement or practice any deception or fraud in examination or appointment;

(b) Induce persons to withdraw from competition for competitive service positions;

(c) Engage in any improper activity with respect to the taking of Office of Personnel Management examinations and examination ratings; and

(d) Obstruct the right of any person to take examinations according to the Office of Personnel Management rules and regulations.

§ 0.735–55 Falsification of official records.

(a) Employees shall avoid making false, misleading or ambiguous statements, deliberately or willfully, whether oral or written, in connection with any matter of official interest. Some of these matters of official interest are: Transactions with the public, other Federal agencies or fellow employees; application forms and other forms which serve as a basis for appointment, reassignment, promotion or other personnel action; vouchers; leave records; work reports of any nature or accounts of any kind; affidavits; entry or record of any matter relating to or connected with the employee's duties; and report of any moneys or securities received, held or paid to, for or on behalf of the United States.

(b) Furnishing false information may subject employees to dismissal from Federal employment, or other disciplinary or adverse action; and may also result in criminal prosecution (18 U.S.C. 1001).

§ 0.735–56 Miscellaneous statutory provisions.

Bureau heads should advise employees of any laws which relate specifically to employees in their bureaus. The attention of every employee is directed to the statutes relating to conduct listed below: (a) Pub. L. 96–303, July 3, 1980, 94 Stat. 855, 856, the "Code of Ethics for Government Service" (5 U.S.C. 7301 note).

(b) The prohibition placed on Department of the Treasury employees against carrying on any trade in any public funds or debts or obtaining any personal gain from transacting the Department's business (31 U.S.C. 329).

(c) Chapter 11 of Title 18, U.S.C., relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(d) The prohibition against the misuse of official mail for private purposes (18 U.S.C. 1719).

(e) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(f) The prohibition against—

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643) and

(3) Embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(g) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(h) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(i) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); (2) the disclosure of confidential information (18 U.S.C. 1905); (3) the unlawful disclosure of personal information (5 U.S.C. 552a); and (4) the disclosure of tax information (26 U.S.C. 6103).

(j) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(k) The prohibition against Federal employment of any person convicted of a felony in furtherance of, or while participating in, a riot or civil disorder (5 U.S.C. 7313).

(l) The tax imposed on certain employees (e.g., Presidential appointees, employees excepted under Schedule C, employees whose compensation is equal to or greater than that for GS–16, or executive assistants or secretaries to any of the foregoing) who knowingly engage in self-dealing with a private foundation (26 U.S.C. 4941, 4946). "Self-dealing" is defined in the statute to include certain transactions involving an employee's receipt of compensation or other benefits such as a loan, or reimbursement for travel or other expenses from, or his or her sale to or purchase of property from, a private foundation.

(m) The prohibition against a public official appointing or promoting a relative, or advocating such an

appointment or promotion (5 U.S.C. 3110).

(n) The prohibition against interfering with Office of Personnel Management examinations (18 U.S.C. 1917).

(o) The prohibition against striking against the Government (18 U.S.C. 1918).

§ 0.735–57 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, or notoriously disgraceful conduct, or any other conduct prejudicial to the Government. See Federal Personnel Manual Chapter 731 for general guidance n the use of the terms "criminal, infamous, dishonest, or notoriously disgraceful conduct."

§ 0.735–58 Nondiscrimination.

While in the performance of duty, no employee may discriminate against any other employee, applicant for employment, or person dealing with the Department on official business because of race, color, religion, national origin, sex, age, or handicap. Nor may any employee engage in acts of sexual harassment.

§ 0.735–59 Possession of weapons and explosives.

Employees while on official duty or while in Government buildings shall not have in their possession firearms, other dangerous or deadly weapons or explosives, either openly or concealed, except for official purposes.

§ 0.735–60 Privacy Act.

(a) The head of each office and division shall be responsible for assuring that employees under their supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil remedies provided therein. Also, that employees are made aware of their responsibilities to protect the privacy of individuals by:

(1) Avoiding unauthorized disclosure either orally or in writing;

(2) Assuring that information maintained is accurate, relevant, timely and complete;

(3) Insuring that no system of records, as defined in section 2(a)(5) of the Act is maintained without public notice.

(b) Employees of the Department of the Treasury shall:

(1) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out a responsibility of the Department;

(2) Collect from individuals only that information which is necessary to Department functions or responsibilities;

(3) Collect information, wherever possible, directly from the individual to whom it relates, unless related to a system exempted under 5 U.S.C. 552a(j);

(4) Inform individuals from whom information is collected of the authority for collection, the purposes thereof, the use that will be made of the information, and the effects, both legal and practical, of not furnishing information;

(5) Neither collect, maintain, use nor disseminate information concerning an individual's religious or political beliefs or activities or an individual's membership in associations or organizations, unless

(i) The individual has volunteered such information;

(ii) The information is expressly authorized by statute to be collected, maintained, used or disseminated; or

(iii) The activities involved are pertinent to and within the scope of an authorized investigation, adjudication or correctional activity;

(6) Advise their supervisors of the existence or contemplated development of any record system which is capable of retrieving information about individuals by individual identifier;

(7) Disseminate no information concerning individuals outside the Department except when authorized by 5 U.S.C. 552a or pursuant to a routine use published in the **Federal Register**;

(8) Keep an accounting in accordance with applicable directives, of all disclosure of personal information outside the Department, whether made orally or in writing;

(9) Maintain and process information concerning individuals with care in order to insure that no inadvertent disclosure of the information is made either within or without the Department; and

(10) Assure that the proper Department authorities are aware of any information in a system maintained by the Department which is not authorized to be maintained under the provisions of the Pricacy Act of 1974, including information on First Amendment activities, or information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individual concerned.

(c) Employees may be charged with a misdemeanor and a fine up to $5,000 for the following violations:

(1) Willful disclosure of records which is prohibited by section 3 of the Privacy Act of 1974 after having knowledge that disclosure of the specific material is so prohibited,

(2) Willful maintenance of records without meeting the requirements of publication of a notice concerning such system in the **Federal Register** under section 3(e)(4) of the Privacy Act; or, (3) obtaining records under false pretenses.

Subpart C—Confidential Statement of Employment and Financial Interest

§ 0.735–90 General.

(a) Section 403 of Executive Order 11222, as amended by Executive Order 12565, authorizes the Office of Personnel Management to prescribe regulations requiring certain officers and employees in the Executive Branch to file confidential statements of employment and financial interests.

(b) This Subpart describes Treasury procedures required to implement Executive Order 11222, as amended, and the regulations of the Office of Personnel Management, 5 CFR Part 735.

(c) Treasury officers required to file public financial disclosure reports by virtue of the Ethics in Government Act of 1978 shall do so in accordance with the procedures set out in Subpart D and will not be required to file confidential statements under this subpart, except as provided by § 0.735–153.

(d) Each bureau will submit a list of positions which meet the criteria for filing confidential statements to the Designated Agency Ethics Official by March 1 of each year. The Designated Agency Ethics Official will designate positions for coverage by April 1 of each year. Bureaus will advise employees of their filing requirements by May 1 of each year.

§ 0.735–91 Criteria for designation of employees required to submit confidential statements.

Except as provided in § 0.735–93 confidential statements of employment and financial interest will be filed by the following employees:

(a) Those classified at GS–13 to GS–15 under 5 U.S.C. 5332, or at a comparable pay level under another authority, who are in positions, the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-federal enterprise; or

(4) Other activities where the decision or action has an economic impact on the interests of any non-federal enterprise.

(b) Those classified at GS–13 to GS–15 under 5 U.S.C. 5332, or at comparable pay level under another authority, who are in positions determined to have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflict of interest situation and carry out the

purpose of law, Executive Order, 5 CFR Part 735, and this part.

(c) Those classified below GS–13 under 5 U.S.C. 5332, or at a comparable pay level under other authority, who are in positions which otherwise meet the criteria in paragraphs (a) and (b) of this section, but only when the inclusion of the position has been specifically justified in writing to the Office of Personnel Management as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflict of interest situation.

(d) A list of designated positions requiring filing will be published annually as a Departmental directive.

§ 0.735–92 Exceptions.

Employees in positions that meet the criteria in paragraph (a) of § 0.735–91 may be excluded by the Designated Agency Ethics Official from the reporting requirement when it is determined that:

(a) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict of interest situation is remote; or

(b) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

§ 0.735–93 Grievance; form and conduct of statements.

(a) An employee who believes that his or her position has been improperly designated as one requiring submission of a confidential statement of employment and financial interest may challenge that determination through the agency's normal grievance procedure.

(b) The confidential statements of employment and financial interests required under this subpart for use by employees and special Government employees shall contain, as minimum, the information required by the formats prescribed by the Office of Personnel Management in the Federal Personnel Manual. Such statements shall not include questions that go beyond, or are in greater detail than those included in Office of Personnel Management formats without the approval of the Office of Personnel Management.

§ 0.735–94 Time and place for submission of employees' initial statements.

Each employee required to submit a statement of employment and financial interests shall submit that statement to the office or official designated by the bureau head (reviewing official) not later than 30 days after the employee's entrance on duty in a covered position.

§ 0.735–95 Annual statements.

Employees shall submit an annual statement of employment and financial interests that shows changes in or additions to their original statement up to and including June 30 of each year, except when the Office of Personnel Management authorizes a different date. A complete report is required even if no change has occurred since the last report. This statement is required to be submitted to the reviewing official no later than July 31 each year. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result in a violation of the conflicts of interest provisions of 18 U.S.C. 208, Subpart C of 5 CFR Part 735, or this part.

§ 0.735–96 Interests of employees' relatives.

For purposes of completing the confidential statement of employment and financial interest, the interests of a spouse, minor child, or other member of the employee's immediate household are to be considered interests of the employee. In other words, those blood relations who are residents of the employee's household are to be treated for purposes of completing the financial statement as though they were the employee and, therefore, the report of financial interests should reflect their employment and financial interests in the same manner that the employment and financial interests of the employee are shown.

§ 0.735–97 Information not known by employees.

If any information required to be included in a statement of employment and financial interests, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information on his or her behalf.

§ 0.735–98 Information excluded.

The regulations in this subpart do not require an employee to submit on a statement of employment and financial interests any information relating to the employee's exercise of First Amendment rights, or the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic or political organization or a similar organization not conducted as a business enterprise. For the purposes of the regulations in this part, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 0.735–99 Review of statements.

(a) Each bureau will make provision for a review of the statements submitted by its employees. This review may be made either by the bureau head or his or her designee. The system of review shall be designed to disclose conflicts of interest or apparent conflicts of interest on the part of employees. If information from the statements submitted or from other sources indicates a conflict of interest, the employee concerned shall be given an opportunity to explain the conflict or apparent conflict. If the conflict or apparent conflict is not resolved at the bureau or a lower organizational level, the matter will be referred to the Designated Agency Ethics Official.

(1) The assistance of the Designated Agency Ethics Official may be sought at any time.

(2) Each bureau head will submit a statistical report to the Designated Agency Ethics Official weekly beginning August 15 until the review process is complete.

The report shall contain the number of statements required, the number received and the results of the reviews (such as the number approved and those awaiting final resolution).

(b) Notwithstanding paragraph (a) of this section, attorneys in the Legal Division shall submit their statements to their immediate supervisor for review, who will forward the statements to the Deputy General Counsel.

(c) In the case of officers who file public financial disclosure reports and who are also required by their bureaus to file supplemental information on a confidential basis in accordance with § 0.735–153, the supplemental information shall be filed with the head of the bureau, or his or her designee; and in the case of a bureau head filing such supplemental information, he or she shall submit it to the official in the Office of the Secretary to whom he or she reports under Treasury Department Order No. 101–5. Reviewing officials shall inform employees required to file supplementary statements in writing that such statements are due on or about June 15 each year. The statements will be reviewed by reviewing officials by August 31 and resolution shall be completed no later than September 30.

Approval of each supplementary statement shall be shown affirmatively by initialing an "O.K." or other symbol of approval and the date of approval. The official shall submit a copy of each statement to the Designated Agency Ethics Official no later than September 15.

§ 0.735–100 Confidentiality of employees' statements.

(a) Statements of employment and financial interests shall be held in confidence. To ensure this confidentiality, bureaus and offices shall designate which employees are authorized to review and retain the statements. Employees so designated are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part.

(b) Criminal penalties may be imposed on an employee who willfully and knowingly discloses to an unauthorized person information protected under the Privacy Act.

§ 0.735–101 Effect of employees' statements on other requirements.

The submission of a statement or supplementary information by an employee does not permit him or her or any other person to participate in a matter in which his or her or the other person's participation is prohibited by law, order, or regulation.

Subpart D—Executive Personnel Financial Disclosure Requirements

§ 0.735–150 General.

Executive personnel are required to file public financial disclosure statements upon appointment, termination, and annually in accord with the regulations of the Office of Government Ethics, 5 CFR Part 734. For purposes of this reporting, executive personnel are all those, at the Executive Level; in the Senior Executive Service; classified at GS–16 or above; paid at the minimum rate of basic pay fixed for GS–16 if paid under other than the General Schedule; or exempted from the competitive service by reason of being a confidential or policy-making character (Schedule C), unless exempted from reporting by the Office of Government Ethics. For more information regarding this exemption as well as exemptions for special Government employees, and for those serving in a covered position for less than sixty-one days in a calendar year, see § 0.735–155.

§ 0.735–151 Procedure.

All executive personnel will file public financial statements on Standard Form 278 (or such other form as is prescribed by the Office of Government Ethics) pursuant to 5 CFR Part 734 and instructions which will be provided to each covered employee.

§ 0.735–152 Penalties.

Penalties for failure to file, or for falsification of a financial disclosure form are provided by the Ethics in Government Act of 1978. These penalties are a civil penalty of up to $5,000 and administrative remedies which may include adverse action under 5 CFR Part 752.

§ 0.735–153 Supplemental information.

Officers required to file public financial disclosure reports are generally exempt from the requirement to submit Confidential Statements of Employment and Financial Interests. Nevertheless, such officers may be required to submit supplemental information on a confidential basis if it is determined that such information is needed by Treasury or the officer's bureau for enforcement of specific statutes or regulations not having Government-wide application. Upon receipt of sufficient justification by a bureau, the Designated Agency Ethics Official will approve requests for the collection of supplemental information and seek the approval of the Office of Personnel Management, if necessary.

§ 0.735–154 Exemptions from filing.

(a) Schedule C employees classified below GS–16 (or paid at a rate lower than GS–16 step 1 if not classified in the General Schedule) may be exempted from filing if they have no role in advising or making policy determinations with respect to agency programs or policies (such as those serving as chauffeurs, private secretaries, stenographers, and the like) pursuant to 5 CFR 734–203. The Director of Personnel will provide a list to the Designated Agency Ethics Official of those who are believed to meet the requirements for exclusion by April 15 of each year. The list will include a description of each position and the name of the incumbent. After review, the list will be provided to the Office of Government Ethics by May 15 of each year. The Director of Personnel will notify those on this final list of their exemption. In the event of subsequent disapproval of any exemption by the Office of Government Ethics the Designated Agency Ethics Official will notify the Director of Personnel so that the Director may require filing by that individual.

(b) Creation of new Schedule C positions during the year requires an immediate determination of exemption. The Director of Personnel shall make the report required in paragraph (a) (if exemption is believed appropriate) not later than ten days after the individual's entrance on duty. The procedures in paragraph (a) of this section will be followed for these special reports.

(c) An individual may be exempted from filing if the Designated Agency Official determines that the employee will serve sixty days or less in a covered position. The Director of Personnel or bureau heads will promptly request such exemptions if appropriate. A report is required 15 days after the sixty-first day of service of an exempted employee (5 CFR 734.204).

(d) Special Government employees who serve more than sixty days may be exempted from public disclosure by the Director of the Office of Government Ethics. Copies of exemption requests shall be sent to the Designated Agency Ethics Official. The waiver request must be filed with the Office of Governemnt Ethics within:

(1) Ten days after the individual knows that he or she will serve more than sixty days in any calendar year; or

(2) The expiration of the sixty days. Rules governing this waiver are at 5 CFR 734.205.

§ 0.735–155 Ethics agreements.

An ethics agreement is a written commitment by an employee to take certain actions, such as recusal, divestiture and the like to avoid an actual or potential conflict of interst. Nominees to positions requiring Senate confirmation are the most likely to execute such agreements as part of the appointment and confirmation process. There are special rules concerning ethics agreements at 5 CFR 734.803 *et seq.* These rules cover notification of compliance with the terms of the agreement, and provisions for filing and retention of agreements.

Subpart E—Special Government Employees

Conflict of Interest Statutes

§ 0.735–210 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special Government employees are less stringent than those which affect regular employees. These two sections in general operate to preclude a regular Government employee, except in the discharge of his or her official duties, from representing another person before a department, agency or court, whether with or without compensation, in a

matter in which the United States is a party or has a direct and substantial interest. However, the two sections impose only the following major restrictions upon a special Government employee:

(1) He or she may not, except in the discharge of his or her official duties represent anyone else (or receive compensation from another's representation) before a court or Government agency in a matter involving a specific party or parties in which the United States is a party or has direct and substantial interest and in which he or she has at any time participated in the course of his or her Government employment.

(2) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if he or she has served the agency no more than 60 days during the past 365. He or she is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special Government employee on the days when he or she does not serve the Government as well as on the days when he or she does.

(c) An employee who undertakes service with the Department of the Treasury and another department or agency shall inform each of his or her arrangements with the other.

(d) There may be situations where a special Goverment employee has a responsible position with his or her regular employer which requires him or her to participate personally in contract negotiations with the Department. In this situation, the special Government employee should participate in the negotiations for his or her employer only with the knowledge of a responsible Treasury official; *i.e.*, the full-time official to whom the special Government employee reports. Prior to permitting such participation, the responsible Treasury official shall obtain approval in writing of the Deputy General Counsel.

(e) Section 205 of Title 18, U.S.C., contains certain exemptions. The first of these deals with a similar situation which may arise after a Government grant or contract has been negotiated. This provision in certain cases permits both the Government and the private employer of a special Government employee to benefit from his or her performance of work under a grant or contract for which he or she would otherwise be disqualified because he or she had participated in the matter for the Goverment or it is pending in an agency he or she has served more than 60 days in the past year. More particularly, the provision gives the head of a department or agency the power, notwithstanding any prohibition in either section 203 or 205 or Title 18 U.S.C. to allow a special Government employee to represent before such department or agency either his or her regular employer or another person or organization in the performance of work under a grant or contract, provided the national interest so requires. The action required to effect the exemption is a certification by the Secretary to be submitted for publication in the **Federal Register**. Such certifications will be forwarded to the Secretary through the Deputy General Counsel, and the exemption will not take effect until the certification is published.

(f) The other exemptive provision requiring action permits a special Government employee to represent, with or without compensation, a parent, spouse, child, or person or estate he or she serves as a fiduciary, but only if he or she has the approval of the official responsible for appointments to his or her position and the matter involved is neither one in which he or she has participated personally or substantially nor one under his or her official responsibility. The term "official responsibility" is defined in 18 U.S.C. 202 to mean, in substance, the direct administrative or operating authority, whether intermediate or final and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action in the Department of the Treasury.

§ 0.735-211 Applicability of 18 U.S.C. 207.

(a) Section 207 of Title 18, U.S. Code applies to individuals who have left Government service, including former special Government employees. It prevents a former employee or special Government employee from representing another person in connection with certain matters (or making oral or written communications with the intent to influence to the Government or a court) in which he or she participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. In addition, section 207 of Title 18, U.S. Code, prevents a former employee for a period of two years after his or her employment has ceased, from representing another person (or making oral or written communications with the intent to influence) in such matters before a court, department or agency if the matters where within the areas of his or her official responsibility at any time during the last year of his or her Government service. It should be noted that a consultant or adviser usually does not have "official responsibility."

(b) A special Government employee who serves sixty-one days or more in a given calendar year in a position designated as a Senior Employee position in 5 CFR Part 737 may not represent anyone other than the United States before the employee's former agency in any particular matter (whether a specific party or parties are involved or not) and may not make oral or written communications with intent to influence to that agency for a period of one year after his or her employment has ceased. For purposes of this restriction, certain components of the Department of the Treasury have been designated as separate agencies from the balance of the Department in 5 CFR § 737.31.

§ 0.735-212 Applicability of 18 U.S.C. 208.

(a) Section 208 of Title 18, U.S. Code, bears on the activities of Government personnel, including special Government employees in the course of their official duties. In general, it prevents an employee or special Governemnt employee from participating personally and substantially as a Government officer or employee in a particular matter in which, to his or her knowledge, the employee, the employee's spouse, minor child, partner, or a profit or non-profit organization with which the employee has or is serving as officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. However, the section permits such an employee's agency to grant him or her an exemption if the interest is not so substantial as to affect the integrity of his or her service. Insignificant interests may also be waived by a general rule or regulations.

(b) For the purposes of 18 U.S.C. 208, the phrase "participates personally and substantially in a particular matter" applies to participation through decision, approval, disapproval, recommendation, the rendering of

advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter. Accordingly, a special Government employee should in general be disqualified from participating as such in a manner of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by the section. However, the power of exemption may be exercised in this situation if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization. The power of exemption may, of course, be exercised also where the financial interest involved are minimal in value.

Rules of Conduct

§ 0.735–215 Applicability of Subpart B of this part.

The rules of conduct (§§ 0.735–20 through 0.735–61) contained in subpart B of this part shall also apply to special Government employees insofar as their employment with the Treasury Department is concerned. However, the prohibition in § 0.735–31, concerning active participation in political management or campaigns (5 U.S.C. 734), only applies to special Government employees on days that they serve the Department. In addition, where there are specific statutes applicable to employees in certain Treasury bureaus, the bureaus concerned should inform their special Government employees of the applicability of those statutes to them.

Consultants and Advisers

§ 0.735–220 Advice on rules of conduct and conflicts of interest statutes.

If a special Government employee who is a consultant, expert, or an adviser has doubt as to the ethics of any conduct falling within the standards of conduct and conflicts of interest statutes, he or she should confer with the Ethics Counselor or a Deputy Counselor.

§ 0.735–221 Industry, labor, agricultural and other representatives.

There are situations where an adviser or member of an advisory committee may be providing advice as a representative of an outside group and not as an employee or special Government employee of the Department. Such questions normally arise with respect to members of advisory committees within the departments. Some advisory committees are clearly composed of representatives of industries. The Attorney General has ruled that the Advisory Group to the Commissioner of Internal Revenue is composed of persons serving in a representative capacity. Bureaus or offices using advisory committees may seek the advice of the Ethics Counselor or a Deputy Counselor to determine whether members of any given advisory committee are serving in a representative capacity and not as employees of the Department. Persons serving in a representative capacity are not subject to the conflict of interest laws, and are not required to file statements of employment and financial interest, but they should nonetheless be guided by the considerations in this part covering such points as use of inside information, abuse of office, and gifts.

Procedures To Be Followed in the Department

§ 0.735–230 Information and assistance to special Government employees and their supervisors.

Each special Government employee appointed in the Department and each supervisor of a special Government employee will be given a copy of this part and will be required to familiarize himself or herself with the conflict of interest laws and the provisions of the instructions applicable to him or her. If a special Government employee or prospective special Government employee or a supervisor desires assistance in interpreting the instructions or laws, he or she will be referred to the Ethics Counselor or a Deputy Counselor.

§ 0.735–231 Disclosure of financial interests.

(a) In order to carry out the responsibility to avoid the use of the services of special Government employees in situations in which violations of the conflict of interest laws or of the regulations in this part may occur, each special Government employee will, at the time of initial employment and each reappointment thereto, be required to supply a statement of

(1) All other employment and

(2) The financial interests of the special Government employee which the head of the bureau or office in which he or she serves determines are relevant in light of the duties he or she is to perform, including, but not limited to, the name of companies in which he or she has a financial interest, and the nature of such financial interest.

Each statement of financial interests will be forwarded to the Deputy General Counsel through the Advisory Committee on Ethical Standards along with a statement of the duties which the proposed special Government employee will be assigned.

(b) The supervisor of the special Government employee should review the statement of employment and financial interests in relationship to the duties to be performed and initially determine that no conflict of interests exists prior to submission of the material to the Advisory Committee. Such statements must be kept current during the period the special Government employee is on the Government rolls. Changes in or additions to the information contained in an employee's statement of employment and financial interest must be promptly reported by the filing of an amended statement. Such changes would include the undertaking of new employment or the acquisition of new financial interest.

(c) The Department official or bureau head appointing a member of an advisory board or committee to serve in an individual rather than a representative capacity may

(1) Waive disclosure of financial information when he or she considers that such imformation is not relevant to the advisory duties of the board or committee, or

(2) Waive disclosure of financial information except that which is relevant to the advisory duties of such board or committee.

Such waiver or partial waiver is for the convenience of the Department and shall in no instance be considered a substitute for the exemption procedures described in § 0.735–212, "Applicability of 18 U.S.C. 208" in this subpart. If the official or bureau head elects to waive or partially waive disclosure of information as described in this paragraph rather than obtain complete disclosure of financial information, he or she must report in writing to the DAEO the names of the persons to whom waivers were granted and the specific reasons for the waivers. In cases of doubt as to which of these actions is appropriate, he or she should obtain advice from the DAEO.

§ 0.735.232 Service with other Federal agencies.

If a special Government employee is serving in other Federal agencies, he or she will be required to inform the Department and each of the agencies of his or her arrangements with the others so that appropriate administrative

measures may be effected. Information of service with other Federal agencies will be submitted along with the statement of employment and financial interests and must be kept current while employed with the Department.

§ 0.735–233 Resolution of cases involving a conflict or apparent conflict of interest.

When a situation arises which indicates a conflict of interest or apparent conflict of interest and the matter is not resolved, information about the situation will be reported to the Ethics Counselor, who in turn, will report to the Secretary. In any such situation, the Special Government employee shall be provided an opportunity to explain the conflict or appearance of conflict.

§ 0.735–234 Legal interpretation.

Whenever the Ethic Counselor believes that a substantial legal question is raised by the employment of a particular special Government employee, the Ethics Counselor will advise the Office of Government Ethics in order to insure a consistent and authoritative interpretation of the law.

§ 0.735–235 Safeguarding of information.

(a) Statements of employment and financial interests, and supplementary statements shall be held in confidence. To ensure this confidentiality, bureaus and offices shall designate which employees are authorized to review and retain the statements. Employees so designated are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part.

(b) Criminal penalties may be imposed on an employee who willingly and knowingly discloses to an unauthorized person prohibited information under the Privacy Act. See § 0.735–61.

(c) The unauthorized disclosure of employees' confidential statements may be the basis for civil action against the Department under the Privacy Act. See U.S.C. 552a(g)(1)(D).

Subpart F—Employees Stationed in Foreign Countries

General Provisions

§ 0.735–300 Purposes.

The General Provisions set forth in Subpart A of this part are applicable to all employees stationed in foreign countries. In addition,

(a) Regular employees stationed in foreign countries are responsible for adhering to the provisions of Subpart B of this part;

(b) Special Government employees are responsible fort adhering to the provisions of Subpart C of this part;

(c) This subpart sets fourth additional rules and guidelines applicable to employees and special Government employees stationed in foreign countries.

§ 0.735–301 Policy.

Treasury employees and special Government employees on official duty in foreign countries are both representatives of the Department of the Treasury and the United States Government and guests of the country in which they serve. This subpart is intended simply to emphasize these points.

§ 0.735–302 General provisions governing conduct in foreign countries.

Treasury employees and special Government employees should familiarize themselves with the standards of conduct for State Department personnel overseas and be guided accordingly. The most important provisions regarding conduct, not otherwise covered in this subpart, are contained in § 0.735–310–0.735–316. Since application of the standards may vary slightly in different countries due to local differences, Treasury employees should look to the State Department or the U.S. embassy for the country in which service is being performed for guidance, interpretation and assistance.

Additional Rules of Conduct

§ 0.735–310 Basic rule of conduct.

Treasury employees and special Government employees are obligated to obey the laws of the country in which they are assigned and to observe the rules of moral and courteous conduct in their official and personal lives.

§ 0.735–311 Applicability to American employees.

Each head of a Treasury organization overseas shall ensure that all employees and special Government employees under his or her jurisdiction have read and are familiar with the provisons of this part.

§ 0.735–312 Applicability to members of families.

Restrictions placed on Treasury employees and special Government employeees with respect to speeches, interviews and participation in activities abroad also shall apply to those members of the family of the employee and special Government employee who normally reside with him or her and are dependent on him or her. An employee or special Governemnt employee shall be held to strict accountability for the actions of his or her family. Members of an employee's or special Government employees' family shall avoid expressing views which are unfriendly to or critical of the United States or the host country, their Government, institutions, or people, either to or in the presence of persons of a foreign nationality. They shall, in addition, refrain from engaging in, or associating closely with groups of people or organizations engaged in activities which are inimical to or embarrassing to the Government of the United States.

§ 0.735–313 Expression of thoughts and views.

Employees and special Government employees shall not allude in public speeches and newspaper interviews to disputes between governments or to active political issues in the United States or elsewhere, except with the authorization of the Department.

§ 0.735–314 Political activities.

Treasury employees and special Government employees shall not engage in any form of political activity in the country to which they are assigned. (This restriction does not apply to alien spouses who may continue to vote in their own countries.)

§ 0.735–315 Acceptance of employment by a member of a family.

Members of the family of a Treasury employee or special Government employee overseas shall not transact or be interested in any business or engage for profit in any professions in the country to which the employee or special Government employee is assigned without the approval of the bureau concerned. However, if the bureau so determines, no approval is required for such employement by the U.S. Government.

§ 0.735–316 Sale of personal automobiles and other personal property.

The following provisions apply to all American employees and special Government employees regardless of agency, attached to United States embassies and contituent parts:

(a) The importation, sale or export of personal property including automobiles of American employees and special Government employees and their dependents must be in accordance with the laws, regulations and conventions of the host country.

(b) Personal property, including motor vehicles, brought to posts abroad by

American employees and special Government employees must be for their bona fide personel use or that of their dependents, and not with intent of sale of transfer.

(c) Automobiles purchased for shipment to new posts of assignments should be unostentatious in appearance and modestly equipped.

(d) The employee or special Government employee will not be permitted to sell his her personal property, including motor vehicles, at an amount in excess of the price he or she paid for it plus taxes and customs duty paid by him or her, or for any valuable consideration in excess of the total of these amounts. However, an employee need not sell his or her personal property, including motor vehicle, he or she may export it, at his or her own or U.S. Government expense, under pertinent travel or shipping regulations. He or she must export it if required to do so by local law, local government regulation, or rules established by the ambassador.

(e) Full responsibility rests with the ambassador for controlling the importation and sale of personal property by all American employees or special Government employees attached to the embassy or constitutent posts. He or she will issue and ensure compliance with local regulations consistent with policy prescribed herein and with other applicable regulations.

(f) Since conditions surrounding the importation and sale of personal property, including motor vehicles, vary wildely country by country, Treasury must rely on the ambassador to issue detailed local regulations and procedures tailored to meet unique local stituations. In issuing such local regulations and procedures consideration should be given to the following alternatives among others available to the ambassador. The ambassador may:

(1) limit or prohibit importation of certain kinds of personal property. (For example, he or she may limit the number or frequency of motor vehicles imported.)

(2) limit classes of persons to whom sales may be made. (For example, he or she may arrange for personal property sales to the host government, or to the U.S. Mission's commissary or employee association for use or rental by it.)

(3) limit the conversion of currency realized from the sale of personal property.

(4) require the exportation of personal property at Government or the employee's or special Government employee's expense under applicable travel or shipping regulations.

Advice and Counseling

§ 0.735-32 Responsibility for guidance and assistance.

Supervisors in charge of Treasury activities overseas are responsible for providing guidance and assistance to their employees and special Government employees regarding conduct in such overseas activities. In the event the supervisor in the overseas location needs assistance and guidance or interpretation, he or she should first look to the State Department representative in the overseas country. If that is not possible or if he or she needs further assistance he or she should contact his or her bureau head. Bureaus may refer questions on the regulations in this part to the Ethics Counselor who will confer with the State Department where necessary to assure uniformity of interpretation and application of this Subpart to employees stationed in foreign countries.

[FR Doc. 87-27454 Filed 11-30-87; 8:45 am]
BILLING CODE 4810-25-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 304

[Docket No. CRT 87-4 PBRA]

1987 Adjustment of Public Broadcasting Royalty Rates and Terms

AGENCY: Copyright Royalty Tribunal.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Tribunal proposes a royalty rate for the use of copyrighted published nondramatic musical compositions by public broadcasting entities which are licensed to colleges, universities or other nonprofit educational institutions and which are not affiliated with National Public Radio. This proposal is a supplement to the proposed rulemaking the Tribunal published on November 20, 1987.

DATES: All comments are due by December 15, 1987.

ADDRESSES: Comments are to be filed with: Chairman, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Washington, DC 20036, 202-653-5175.

SUPPLEMENTARY INFORMATION: On November 20, 1987, the Copyright Royalty Tribunal published in the **Federal Register** a notice of proposed rulemaking proposing to adjust the public broadcasting royalty rates and terms for the period January 1, 1988 to December 31, 1992. 52 FR 44610.

With regard to the royalty rate which would apply to the use of copyrighted published nondramatic musical compositions by public broadcasting entities which are licensed to colleges, universities or other nonprofit educational institutions and which are not affiliated with National Public Radio, the Tribunal proposed to adopt the joint proposal of the American Society of Composers, Authors, and Publishers (ASCAP) and the American Council on Education (ACE) that this rate be adjusted each year according to the change in the Consumer Price Index (CPI). However, the Tribunal stated in the November 20 notice that it did not have the most current CPI figures on which to base an adjustment from 1987 to 1988.

On November 23, 1987, the Tribunal obtained the most current CPI figures and the purpose of this further notice of proposed rulemaking is to supplement its proposed rulemaking of November 20, 1987.

The change in the cost of living as determined by the CPI from the last Index published prior to December 1, 1986 to the last Index published prior to December 1, 1987 was 4.48% (1987's figure was 345.3; 1986's figure was 330.5). Rounding off to the nearest dollar, the Tribunal proposes a royalty rate to apply to use of musical compositions in the repertory of ASCAP and BMI of $159, each, and $37 for the use of musical compositions in the repertory of SESAC.

Accordingly, it is announced that the Tribunal proposes to revise § 304.5(c) of Part 304 of the Tribunal's rules, as shown below:

List of Subjects in 37 CFR Part 304

Copyrights, Music, Radio, Television.

PART 304—[AMENDED]

1. The authority citation for Part 304 continues to read as follows:

Authority: 17 U.S.C. 118 and 801 (1976).

2. 37 CFR Part 304.5(c) is amended by removing the entries containing dollar amounts and inserting the following:

§ 304.5 [Amended]

* * * * * * *

(c) * * *

For all such compositions in the repertory of ASCAP annually	$159
For all such compositions in the repertory of BMI annually	$159

For all such compositions in the repertory of SESAC annually.....$37
For the performances of any other such composition.....$1

* * * * * * *

Dated: November 25, 1987.

J.C. Argetsinger,

Chairman.

[FR Doc. 87-27596 Filed 11-30-87; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 38, 54, 98, and 151

[CGD 85-061]

Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks on Barges

AGENCY: Coast Guard.

ACTION: Notice of proposed rulemaking; extension of the comment period.

SUMMARY: This notice extends the comment period on the notice of proposed rulemaking (NPRM) published on September 8, 1987 (52 FR 33841) concerning the intervals between internal examinations and hydrostatic testing of pressure vessel type cargo tanks on barges. The comment period, as originally published, would have expired on December 7, 1987. An extension was formally requested by Ashland Petroleum Company, The American Waterways Operators, Inc., Hollywood Marine, Inc., Southern Towing Co., and Chotin Transportation, Inc. Ashland Petroleum simply requested an extension, all the other comments specifically requested a 90 day extension. Generally, the reasons for requesting the extension were the same, the comment period was too short to adequately analyze the effect of the NPRM on the segment of the barge industry with pressure vessel type cargo tanks. The American Waterways Operators and Hollywood Marine, Inc., also suggested that an extension to the comment period will allow the Towing Safety Advisory Committee to schedule a publicly-docketed Subcommittee meeting to pursue an analysis and discussion of the NPRM. The Coast Guard believes that the quality of the final rule will be enhanced by extending the comment period. Therefore, the comment period is extended for 90 days.

DATES: Comments must be received on or before March 7, 1988.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), U.S. Coast Guard Headquarters, Washington, DC 20593-0001. Comments will be available for inspection or copying at the Marine Safety Council (G-CMC/21), Room 2110, 2100 2nd Street SW., Washington, DC 205593-0001, between 7:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Geoffrey D. Powers, (202-267-1185).

Signed: November 23, 1987.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 87-27566 Filed 11-30-87; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

Maritime Services; Use of Digital Selective Calling (DSC) Equipment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes new rules concerning DSC equipment characteristics, unlimited transmitter operations and the transmission of ship safety communications from unoccupied vessels. The proposed rules are designed to update the existing rules concerning DSC equipment characteristics to conform with international recommendations and newly address the matter of unattended transmitter operations, including the transmission of ship safety communications from unoccupied vessels. The intended effect is to increase the benefits that the new DSC technology can provide to the marine community.

DATES: Comments are due on or before May 2, 1988 and reply comments on or before June 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in PR Docket No. 87-491 adopted October 22, 1987 and released November 9, 1987. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M St., NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M St., NW., Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. Digital selective calling (DSC) is a signalling system that can be used to establish contact with a station or group of stations in the maritime radio services. DSC provides an improvement over the old method of establishing radio contact which required a ship operator to (1) be on duty, and (2) be monitoring for a call. The DSC system, therefore, promotes additional safety and more efficient use of the spectrum. DSC will eventually be an integral part of the Global Maritime Distress and Safety System (GMDSS) planned for implementation in the 1990's.

2. In 1985 the Commission adopted a *Report and Order*, in PR Docket No. 83-431, that amended its maritime services rules to provide for the optional use of DSC equipment. These rules were based on the then effective International Radio Consultative Committee (CCIR) Recommendation 493-2 which was developed primarily for large, ocean-going ships. However, in order to enable manufacturers to design simpler and less expensive DSC equipment for smaller vessels we specified the minimum operating characteristics that would be permissible under CCIR Recommendation 493-2. For example, recreational boaters normally would not need or desire all the functions available with the more expensive DSC equipment designed for large, ocean-going ships. The goal was to permit relatively simple DSC equipment to perform the selective calling function while maintaining characteristics for distress alerting and safety calling.

3. In 1986 CCIR revised its document entitled "Digital Selective-Calling System for use in the Maritime Mobile Service" (CCIR Recommendation 493, Dubrovnik, 1986). This Recommendation provided for three levels of DSC equipment. The first level would be used by compulsorily fitted vessels that are required to have a sophisticated radio installation for safety purposes. Two simpler versions of DSC equipment specifications were also developed to fill the needs of the smaller vessel operators. The three levels now fill the need that the Commission had sought to satisfy in the earlier *Report and Order*.

4. We propose, therefore, to remove the minimum operational characteristics from our current rules to permit all clases of DSC equipment to be used on U.S. vessels in conformance with CCIR Recommendation 493, Dubrovnick, 1986. The three classes of DSC equipment

contained in the revised CCIR Recommendation are:

• *Class A*—DSC equipment intended for large, ocean-going ships to meet the GMDSS carriage requirements.

• *Class B*—DSC equipment applicable to small ships equipped only with VHF and/or MF two-way communications equipment.

• *Class C*—DSC equipment intended as an add-on for VHF communications equipment to provide DSC alerting, transmitting ship identification only.

5. We are also proposing to authorize the use of VHF DSC to transmit brief digital messages that relate to the condition or safety of vessels without persons on board. Such systems utilize sensors capable of detecting fire, explosion, grounding, listing, sinking, intrusion and the like. In the past, the use of marine frequencies for safety purposes on board unoccupied ships has been barred because of rule provisions that prohibit unattended transmitter operations and the lack of a frequency that could be dedicated to this purpose. However, Article 60 of the international Radio Regulations authorizes the use of marine frequencies in the port operations service for communications related to the safety of ships. Channel 70 (156.525 MHz) is already dedicated to VHF DSC and could be used for this purpose.

6. Transmission of a VHF DSC message would take approximately 0.5 seconds. CCIR Recommendation 541 provides that if a call is not acknowledged by the addressed coast station, the call sequence from the ship station could be repeated after five seconds in the case of automatic VHF connections. Any subsequent repetitions of the call sequence could not be made until at least fifteen minutes have elapsed. Comments are invited as to whether the use of VHF DSC should be authorized for such marine safety communications and, if authorized, whether any restrictions should be required to preclude overload of channel 70 in high density areas.

7. The conditions under which unattended transmitter operations would be authorized would include:

(a) Automatic operation of transmitters when performing:

— Narrow Band-Direct Printing (NB-DP) operations in accordance with CCIR Recommendation 476 or 625.

— Digital selective calling (DSC) operations in accordance with CCIR Recommendations 493 and 541.

— Automated Maritime Telecommunications System (AMTS) operations or automated multi-station systems for which provision are contained in Part 80.

(b) Emergency position indicating radiobeacon (EPIRB) operations when emergency conditions preclude attendance of the EPIRB transmitter by a person.

8. The proposed amendments to the Commission's rules set forth below are issued under the authority contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) 303(r).

9. Pursuant to applicable procedures set forth in §§ 1.1415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 31, 1987; and reply comments on or before January 15, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

10. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissable ex parte contacts.

11. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements.

12. The Commission hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) that this rule making proceeding will not have a significant economic impact on a substantial number of small entities. The proposed rules replace the minimum operational characteristics contained in our current rules. No manufacturer is manufacturing DSC equipment under the rules proposed to be deleted in this proceeding. No new equipment carriage requirements are imposed.

13. A copy of this Notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 80

Coast stations, Ship stations, Marine safety, Radio communications equipment.

Proposed Rules

Part 80 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.153(a) is revised to read as follows:

§ 80.153 Coast station operator requirements.

(a) Except as provided in § 80.179, operator of a coast station transmitter must be performed by a person holding a commercial radio operator license of the required class, who is on duty at the control point of the station. The operator is responsible for the proper operation of the station.

* * * * *

3. Section 80.155 is revised to read as follows:

§ 80.155 Ship station operator requirements.

Except as provided in §§ 80.177 and 80.179, operation of transmitters of any ship station must be performed by a person holding a commercial radio operator license or permit of the class required below. The operator is responsible for the proper operation of the station.

4. A new § 80.179 is added to read as follows:

§ 80.179 Authorized unattended transmitter operations.

The following unattended transmitter operations are authorized:

(a) EPIRB operations when the emergency conditions preclude attendance of the EPIRB transmitter by a person.

(b) Automatic use of a transmitter during narrow band-direct printing (NB-DP) operations in accordance with CCIR Recommendation 476 or 625.

(c) Automatic use of a transmitter during digital selective calling (DSC) operations in accordance with CCIR Recommendations 493 and 541.

(d) Automatic use of a transmitter when operating as part of the Automated Maritime Telecommunications System (AMTS) or an automated multi-station system for which provisions are contained in this Part.

(e) Automatic use of a VHF transmitter to send brief digital communications relating to the condition or safety of unoccupied vessels when all of the following conditions are met:

(1) The equipment is using DSC in accordance with CCIR

Recommendations 493 and 541 as modified by this section.

(2) Sensors automatically activate the transmitter under one or more of the following conditions:

(i) Fire, explosion;

(ii) Flooding;

(iii) Collision;

(iv) Grounding;

(v) Listing, in danger of capsizing;

(vi) Sinking;

(vii) Disabled and adrift;

(viii) Intrusion; and

(ix) EPIRB emission.

(3) The "URGENT" category is used for communications unless the "DISTRESS" category is appropriate as would be the case when safety of persons is involved.

(4) Communications are selectively addressed to an individual station. This includes the capability to call a programmed number automatically.

5. Section 80.225 is revised to read as follows:

§ 80.225 Requirements for digital selective calling (DSC) equipment.

This section specifies the requirements for DSC equipment optionally installed in ship and coast stations. Reference to any CCIR Recommendation in this section is the most recent CCIR approved Recommendation that does not prevent the use of existing equipment.

(a) DSC equipment optionally installed in coast and ship stations must be designed in accordance with CCIR Recommendation 493.

(b) Selective calling equipment, other than that designed in accordance with CCIR Recommendation 493, is authorized as follows:

(1) Equipment used in conjunction with the Automated Maritime Telecommunications System (AMTS) in the band 216–220 MHz, and

(2) Equipment used to perform a selective calling function during narrow-band direct-printing (NB–DP) operations in accordance with CCIR Recommendation 476 or 625.

(3) Equipment functioning under the provisions of § 80.207(a) is authorized until at least three years after mandatory DSC requirements become effective.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–26518 Filed 11–30–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 24

Uniform Relocation Act Amendments of 1987

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of regulatory intent.

SUMMARY: On May 19, 1987 (52 FR 18768) the Federal Highway Administration (FHWA) published a notice about the key changes provided by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100–17, 101 Stat. 246). Sections 402(e) and 412 of the 1987 Amendments designate by statute the Department of Transportation (DOT) as the Federal government's lead agency for implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), 42 U.S.C. 4601–4655 (1982). The Secretary of DOT delegated this responsibility to the FHWA. The FHWA today gives further notice of the specific regulatory actions that it and the other affected Federal agencies will take to implement the 1987 Amendments. One of the primary purposes of the 1987 Amendments was to establish a single rule published at a single location in the Code of Federal Regulations (CFR) to implement the provisions of the Uniform Act. It will be necessary for other affected agencies to take action to rescind the common rule, codified at 17 places in the CFR, governing compliance with the Uniform Act, and to replace it with a cross reference to the rule promulgated by the Federal Highway Administration (FHWA).

FOR FURTHER INFORMATION CONTACT: Barbara K. Reichart, Chief, Relocation Division, HRW–20, (202) 366–0116; Gerald B. Saunders, Chief, Real Estate Division, HRW–10, (202) 366–2015; or Reid Alsop, Attorney Advisor, Office of the Chief Counsel, HCC–40, (202) 366–1371.

SUPPLEMENTARY INFORMATION:

Background

In 1981, for the Vice President's Presidential Task Force on Regulatory Relief, State and local governments identified the Uniform Act as a good candidate for State and local regulatory relief. Therefore, in May 1982, the Office of Management and Budget (OMB), in response to the concerns of State and local governments, formed a Uniform Act Interagency Regulatory Review Working Group to develop uniform regulations to be implemented by each covered agency for the Uniform Act. On March 5, 1985, a Presidential Memorandum dated February 27, 1985, was published in the **Federal Register** (50 FR 8953) naming the Department of Transportation (DOT) as the agency with lead responsibility for the Uniform Act. The Secretary of DOT delegated this responsibility to the Federal Highway Administration. On March 5, 1985, DOT published in the **Federal Register** (50 FR 8755) a model Uniform Act rule, which (in accordance with the President's February 27, 1985, memorandum) served as the basis for a proposed common Uniform Act rule for the 16 other affected agencies. This was issued for comment by those 16 agencies on May 28, 1985. After disposition of comments, the disparate regulations of all affected agencies were superseded by this common regulation which was published as a final rule on February 27, 1986, at 51 FR 7000.

This common rulemaking effort, applicable to both direct Federal programs and projects and federally-assisted programs and projects undertaken by State or local agencies, achieved consistency in regulations among the separate Federal agencies. To a significant extent, this common rulemaking effort presaged many of the statutory changes to the Uniform Act made by the 1987 Amendments. In the administrative area, for example, the 1987 Amendments specifically designate the DOT as lead agency and require it in coordination with other Federal agencies to issue rules, establish procedures and make interpretations to implement provisions of the Uniform Act. In the substantive area, with the major exception of payment levels or criteria that were set by statute, the common rulemaking effort granted greater flexibility and discretion to State and local agencies, a theme reiterated in the 1987 Amendments.

Regulatory Intent

Currently, the common rule implementing the Uniform Act is codified at seventeen different places in the Code of Federal Regulations. These entries will be replaced with a single rule located at one place.

The FHWA plans to implement the 1987 Amendments and to shift to a single government-wide relocation regulation in three basic steps. The first step would be promulgation of a comprehensive "full text" interim final rule, implementing the nondiscretionary provisions of the 1987 Amendments.

This interim final rule will be the same as the current common rule except that in the interim final rule the nondiscretionary provisions of the 1987 amendments will be substituted for the corresponding provisions of the current regulation. This interim final rule is intended to enable Federal, State and local agencies that are willing and able to implement the nondiscretionary provisions of the 1987 Amendments, to do so. The interim final rule would be followed by a notice of proposed rulemaking to implement the remaining provisions of the 1987 Amendments which require interpretation and the development of criteria. This action would be followed by a promulgation of a single final rule implementing the Uniform Act.

Agency Action

The 1987 Amendments provide in section 418 that they are effective on the date provided in the lead agency's regulations, but no later than April 2, 1989. This delay in the effective date was provided to give State and local governments time to enact any additional legislation, if needed, to comply with the 1987 Amendments. The date that the 1987 Amendments and implementing regulations become effective as to a specific agency or program may vary as discussed further below, except that all affected agencies and programs must be operating under the final Uniform Act rule on or before April 2, 1989.

Simultaneous with the issuance of the DOT interim final rule all affected agencies will present regulatory language amending their existing common Uniform Act rules by adding a cross reference to the DOT interim final rule and providing for the rescission of their existing common Uniform Act rule. These revisions will be published at the time that the interim final rule is issued.

Once the interim final rule is issued it should be fully applicable to those Federal agency programs that the Federal agency conducts itself (i.e., where it acts as the acquiring or displacing agency). Such Federal agencies have full legal authority to comply with the 1987 Amendments and are awaiting FHWA regulations to make these Amendments (or portions thereof) effective as to them. For such agencies or programs, the cross reference action can be made effective on the date the interim final rule is effective.

As to Federal agencies that provide Federal financial assistance to State and local agencies or others, the situation is somewhat different. Such Federal agencies probably could not, initially, fully adopt the interim final rule and rescind their current regulations because some of their grant recipients are unlikely to have authority to fully comply with the 1987 Amendments. If the existing regulations of these Federal-aid agencies were rescinded before all of their grant recipients had authority to fully comply with the 1987 Amendments, those grant recipients without such authority would be unable to comply with the Uniform Act and thus would have to halt many program activities.

Accordingly, such Federal-aid agencies will attach whatever effective date, or dates, they wish to their rescission and cross reference action that will accompany the FHWA interim final rule. For example, an agency could have its cross reference to the interim final rule apply only to its grantees that are able to comply with the 1987 Amendments, only to certain programs, or have it become applicable at some future date (on or prior to April 2, 1989). Each affected agency is encouraged to apply the interim final rule to its activities as soon as possible after issuance so as to provide the additional benefits contained in the 1987 Amendments.

(42 U.S.C. 4633; 49 CFR 1.48)

Issued on: November 24, 1987.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 87-27520 Filed 11-30-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 71158-7258]

Pacific Coast Groundfish Fishery Conservation and Management

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary fishery specifications and request for comments.

SUMMARY: NOAA announces and requests comments on the preliminary 1988 specifications for groundfish taken in the U.S. exclusive economic zone and State waters off the coasts of Washington, Oregon, and California. These preliminary specifications estimate the acceptable level of biological catch, the optimum yield (quotas), and the distribution of the optimum yield between domestic and foreign fishing operations for groundfish species and species groups as required by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The intended effect of this action is to obtain public comments which will be considered before determining the final specifications for 1988.

DATES: Comments on the preliminary specifications for 1988 must be received by December 16, 1987.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115, or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140, or Rodney R. McInnis, 213-514-6199.

SUPPLEMENTARY INFORMATION: Under the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at 50 CFR Part 663, the management specifications for groundfish must be evaluated each calendar year, the preliminary specifications for the upcoming year must be published in the **Federal Register** inviting public comment, and the final specifications must be published in the **Federal Register** following public comment. The management specifications include the acceptable biological catch (ABC), the optimum yield (OY), and the distribution of OY between domestic and foreign fishermen. The ABC is a seasonally determined catch that can be taken without jeopardizing a resource's productivity for the more than 80 groundfish species managed by the FMP. The OY which is estimated for six species (Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and, north of 39° N. latitude, jack mackerel) is based on socioeconomic as well as biological factors and thus is not necessarily equal to the ABC. The OYs for these six species are the maximum amounts of fish (in round weight) that may be taken and retained, or landed each year for the exclusive economic zone (EEZ) (3-200 nautical miles) or the State waters sea (0-3 nautical miles) off Washington, Oregon, and California.

The OY for each of these six species includes determinations of the amounts available for domestic and foreign fishing. The domestic annual harvest (DAH) consists of estimates of domestic annual processing (DAP) and joint venture processing (JVP) which are verified by surveys of the industry's

planned utilization in September and June. The total allowable level of foreign fishing (TALFF) is the remainder, if any, of OY after domestic needs have been subtracted. Before TALFF is designated, a reserve of 20 percent of OY is established for each species in case the domestic industry needs more fish than was initially estimated.

The other groundfish species managed under the FMP do not have numerical OYs. They are regulated by gear, area, and catch restriction. For the most part, they cannot be harvested selectively and, unless biological stress is documented, have not been regulated by quotas. Full utilization by domestic processors of some species in this multispecies complex precludes joint venture or foreign targeting on underexploited species because large incidental catches of the fully utilized species are likely to result. Consequently, no numerical specifications for DAH, DAP, JVP, and TALFF are made because joint venture and foreign fishing are not available for any species in the multispecies complex. However, ABCs are specified for the major species or species groups.

The OYs and ABCs may be changed during the year, within limits, under the procedures outlined in the regulations at 50 CFR 663.22.

The Pacific Fishery Management Council (Council) reviewed and recommended preliminary specifications for the 1988 ABCs and OYs and received public comment at its September 1987 meeting. Because better scientific information became available in October, the Regional Director, NMFS, at the request of the Council, revised the ABCs for some species. The preliminary ABCs that are announced in this notice are based upon the best available scientific information and surveys of the industry to estimate processing capacity and planned utilization.

The preliminary 1988 management specifications for each species with a numerical OY are discussed below, followed by Tables 1 and 2 which list the ABCs and OYs for all species or special groups. No ABC changes are proposed for species without numerical OYs so there is no additional discussion for these species. The aggregate data upon which these preliminary specifications are based are available for public inspection at the offices of the Regional Directors (see ADDRESSES above) during business hours untill the end of the comment period.

Pacific whiting. The 1988 ABC for Pacific whiting (whiting) is preliminarily specified as 232,000 metric tons (mt), 19 percent higher than the 1987 ABC of 195,000 mt. The whiting resource is highly cyclic; the stock is rarely, if ever, in a state of equilibrium, and catches have not been large enough to determine whether fishing pressure has an effect on exploitable stock size. It appears that the whiting resources is near the peak of one of its productive cycles, and this peak cannot be maintained regardless of the management strategy. Although the ABC could be set at a higher level in 1988 (followed by much lower ABCs in subsequent years), it is unlikely that landings would increase; the proposed ABC is more than 40 percent above the highest landings on record.

Because whiting is a transboundary species, initial biomass estimates include stocks off western Canada. The proposed ABC specification of 232,000 mt assumes that 71 percent of the exploitable biomass (327,000 mt) is available in the U.S. EEZ, as determined by U.S. and Canadian scientists.

In 1988, as in 1987, ABC and OY are proposed to be equal. The 1988 estimate of shore-based processing is 16,000 mt, slightly larger than the 1987 DAP estimate of 15,000 mt. The estimate of JVP in 1988 is 150,000 mt, 29 percent higher than in 1987. Accordingly, the preliminary determination of the DAH in 1988 is 166,000 mt and initial TALFF is 20,000 mt. The reserve, which is established in case the domestic industry needs more fish than originally projected, in 46,000 mt, 20 percent of the OY. These amounts may change depending on the final specifications of ABC and OY and applications for joint venture processing from potential foreign participants.

Sablefish. The 1988 ABC preliminary specification for sablefish estimated by the Groundfish Management Team is 10,000 mt, 17 percent lower than the 12,000 mt ABC in 1987. Estimates of sablefish stock size have been difficult to determine. Several meetings by stock assessment specialists were held in 1987 in attempts to improve the estimate. Confidence in the ABC was undermined by lack of standardized data, weaknesses in analytical models, and conflicting results.

Several new or refined data sources currently are being examined. Although the analysis is not complete at this time, certain trends indicate the current ABC of 12,000 mt is too high. Preliminary results of the NMFS pot index surveys off Washington and Oregon show about a 70 percent decline in catch per unit of effort (CPUE) since 1983. A decrease in average size also has been seen in the pot surveys which cannot be attributed to strong incoming year classes. Tagging analyses indicate high fishing mortability and relatively low exploitable biomass. These trends imply that the exploitable stock is declining and that recent landings (averaging 13,600 mt between 1980 and 1986) are not sustainable.

The 1988 OY for sablefish is proposed to equal ABC, and also is preliminarily set at 10,000 mt. However, the Council has not yet reviewed the ABC proposed specification and therefore may recommend the final OY be set at some other level. Because domestic processors intend to process all available sablefish, none is available for joint venture or foreign fishing in 1988 except for minimal allowances for unavoidable incidental catches.

Pacific ocean perch. Pacific ocean perch have been overfished in the past and now are managed under a rebuilding schedule specified in the FMP. No new stock assessment was conducted in 1987. The most recent available data indicate little or no rebuilding of the Pacific ocean perch stock since 1979, and currently there are no indications of strong recruitment to the population. Accordingly, the 1988 ABCs for both the Vancouver and Columbia subareas are proposed to be set at zero, as in 1987.

Also as in 1987, the OY is proposed to be at a level that will allow some if not all incidental catches to be landed, but will not encourage directed fishing: 500 mt in the Vancouver subarea and 800 mt in the Columbia subarea. Clearly, domestic processors will fully utilize OY so no Pacific ocean perch are available for joint venture or foreign fishing in 1988 except for minimal allowances for unavoidable incidental catches.

Shortbelly rockfish. The preliminary 1988 ABC and OY specifications for shortbelly rockfish are both 10,000 mt, the same as during 1983–1987. DAP is estimated at 1,000 mt and JVP is estimated at 5,000 mt, the same as during 1986–1987. The reserve is set at 2,000 mt in case domestic needs become higher than initially estimated, and the remaining 2,000 mt is designated for TALFF. Most shortbelly rockfish are available south of 39° N. latitude, an area closed to foreign trawling, and no interest has been expressed in a directed foreign fishery for this species north of 39° N. latitude in 1988.

Widow rockfish. The 1988 preliminary specification of the coastwide ABC for widow rockfish is 12,100 mt, 3 percent lower than the final 1987 ABC of 12,500 mt. This reduction resulted from new analyses indicating a decrease in stock size, in part due to the declining abundance of the strong 1977 and 1978 year classes. This decline is only partially offset by recruitment of the strong 1980 year class; the other

incoming year classes appear to be weak.

Because this species is fully utilized by domestic processors, no widow rockfish are available for JVP or TALFF in 1988 except for minimal allowances for unavoidable incidental catches.

Jack mackerel (north of 39° N. latitude). The preliminary 1988 ABC and OY specification for jack mackerel are both 12,000 mt, the same as during 1985–1987; no new stock assessment has been conducted for this species. No domestic interest was identified for the stock north of 39° N. latitude, the only component of this species managed by the FMP. Accordingly, a reserve of 2,400 mt is proposed in case domestic needs develop, and 9,600 mt is designated for foreign fishing in 1988.

TABLE 1.—PRELIMINARY SPECIFICATIONS OF ABC FOR 1988 IN METRIC TONS FOR THE WASHINGTON, OREGON, AND CALIFORNIA REGION BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS.

Species	Area					Total
	Vancouver [1]	Columbia	Eureka	Monterey	Conception	
Roundfish:						
Lingcod	1,000	4,000	500	1,100	400	7,000
Pacific Cod	2,200	900	[2]	[2]	[2]	3,100
Pacific Whiting						[3] 232,000
Sablefish						[3] 10,000
Rockfish:						
Pacific Ocean Perch	0	0	[2]	[2]	[2]	0
Shortbelly						[3] 10,000
Widow						[3] 12,100
Other Rockfish: [4]						
Bocaccio	[2]	[2]	[2]	4,100	2,000	6,100
Canary	800	[5] 2,100	600	[2]	[2]	3,500
Chilipepper						[3] 3,600
Yellowtail	1,100	[5] 2,600	300	[2]	[2]	4,000
Remaining Rockfish	800	[5] 3,700	1,900	4,300	3,300	14,000
Flatfish:						
Dover Sole	2,400	11,500	8,000	5,000	1,000	27,900
English Sole						[3] 1,900
Petrale Sole	600	1,100	500	800	200	3,200
Other Flatfish	700	3,000	1,700	1,800	500	7,700
Other Fish: [6]						
Jack Mackerel [7]						12,000
Others	2,500	7,000	1,200	2,000	2,000	14,700

[1] U.S. portion.

[2] These species are not common or important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "Other fish" category for the areas footnoted and rockfish species are included in the "Remaining Rockfish" category for the areas footnoted only.

[3] Total all areas.

[4] "Other rockfish" means rockfish species at § 663.2, as amended, which do not have a numerical OY.

[5] For management of the *Sebastes* complex of rockfish, the Columbia area is split into northern and southern parts at Coos Bay, Oregon (43°21'34" N. latitude), and ABCs for the Columbia area as prorated as follows:

	Columbia area (Total)	North of Coos Bay	South of Coos Bay
Canary	2,100	1,700	400
Yellowtail	2,600	2,500	100
Remaining Rockfish	3,700	3,300	400

[6] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, and, in the Eureka, Monterey, and Conception areas, Pacific cod. "Other fish" is part of the "other species" category listed at § 663.2.

[7] North of 39° N. latitude.

TABLE 2.—PRELIMINARY SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1988

[In thousands of metric tons]

Species	Total OY	DAP	JVP [1]	DAH	Reserve	TALFF [1]
Pacific whiting	232.0	16.0	150.0	166.0	46.0	20.0
Sablefish	10.0	10.0	0.0	10.0	0.0	0.0
Pacific ocean perch	[2] 1.3	[2] 1.3	0.0	[2] 1.3	0.0	0.0
Shortbelly rockfish	10.0	1.0	5.0	6.0	2.0	2.0
Widow rockfish	12.1	12.1	0.0	12.1	0.0	0.0
Jack mackerel	12.0	0.0	0.0	0.0	2.4	9.6

TABLE 2.—PRELIMINARY SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1988—Continued

[In thousands of metric tons]

Species	Total OY	DAP	JVP [1]	DAH	Reserve	TALFF [1]
Other species.....	([3])	.....	.....	.....	.....	.....

[1] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.173 percent; Pacific ocean perch 0.062 percent; rockfish excluding Pacific ocean perch 0.738 percent; flatfish 0.1 percent; jack mackerel 3.0 percent; and other species 0.5 percent. In foreign trawl and joint venture fisheries, "other species" means all species, including nongrundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.

[2] Of this 1,300 metric tons, 500 metric tons is for the Vancouver subarea and 800 metric tons is for the Columbia subarea. Pacific ocean perch from other subareas are included in the OY for "other species." See § 663.21(a)(3).

[3] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 663. See § 663.2 for species listing.

Classification

These preliminary specifications are made under the authority of and in accordance with 50 CFR 663.24 (a) and (b). This action is in compliance with Executive Order 12291 and is covered by the Regulatory Flexibility Analysis prepared for the implementing regulations.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Foreign relations.

Authority: (16 U.S.C. 1801 *et seq.*)

Dated: November 24, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-27567 Filed 11-30-87; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 230
Tuesday, December 1, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 87-142]

Availability of Environmental Assessment and Finding of No Significant Impact for Licensure of Recombinant Derived Modified Live Virus Pseudorabies Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service concerning the issuance of a veterinary biological product license to the Diamond Scientific Company for a recombinant derived modified live virus pseudorabies vaccine. The assessment indicates that the use of the recombinant derived pseudorabies virus vaccine will not cause any significant impact on the environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Copies of the environmental assessment are also available upon request at this same address.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Senior Staff Veterinarian, Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and finding of no significant impact relative to its issuance of a U.S. Veterinary Biological Product License (hereinafter, product license) to the Diamond Scientific Co. of Des Moines, Iowa. The product license will be issued for a recombinant derived modified live virus pseudorabies vaccine, in accordance with the provisions of the Virus-Serum Toxin Act (VSTA) (21 U.S.C. 151 *et seq.*).

Under the VSTA, before a veterinary biological product can be licensed, it must be shown to be pure, safe, potent, and efficacious. In order to permit the manufacturer to gather data intended to satisfy vaccine safety requirements as a prerequisite to product licensure, APHIS previously approved the field testing of the pseudorabies virus vaccine. In the course of approving the protocol for field testing, APHIS assessed the impact to the environment of conducting the field testing in a limited number of states. The APHIS notice of availability of the environmental assessment and finding of no significant impact for limited field testing was published in the **Federal Register** on May 5, 1987 (see 52 FR 16424-25).

The environmental assessment and finding of no significant impact concerning the issuance of the product license provides the public with documentation of APHIS' review and analysis of environmental effects which may be associated with general distribution of the pseudorabies vaccine.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genetic engineering procedures were employed to facilitate two gene deletions in the pseudorabies virus (PRV) genome. One deletion destroyed the viral thymidine kinase (tk) gene which is required for the virus to replicate in the host's nervous system and hence cause disease. A second deletion destroyed a gene coding for a viral glycoprotein (gX) which then prevents antibodies from being elicited to this glycoprotein, thus allowing vaccinated animals to be distinguished from those infected with a field virus.

2. The recombinant derived modified live virus pseudorabies vaccine was shown to be avirulent and yet fully capable of eliciting an immune response that protects pigs from PRV, but not able to elicit antibodies to gX which allows the differentiation between infected pigs and vaccinates.

3. Transmission of the vaccine derived from recombinant DNA techniques could not be demonstrated in that vaccine virus was not detected on nasal swabs taken from either vaccinated pigs or from sentinel animals.

4. Vaccination by the recombinant vaccine reduces replication and shedding of wild-type virus that could subsequently infect other animals. Therefore, the vaccine will reduce the dissemination of the virulent virus into the environment.

5. The tk gene deletion is a stable characteristic of the vaccine virus with a probability of reversion being essentially zero.

6. The wild-type pseudorabies virus is found widely distributed in nature and it does not contain an oncogene or cancer-causing substance. Because the recombinant derived virus does not contain any new genetic information, there is no likelihood of it being oncogenic.

7. The recombinant derived modified live virus vaccine was shown to be safe in a variety of field tests. The safety of the vaccine was demonstrated in trials which consisted of verification of label recommendations for vaccine administration, and field test of a prelicensing serial of product.

8. Safety testing was satisfactorily conducted when 300 swine in six states were immunized with the vaccine and the product did not cause undue local or systemic reactions when used as recommended by the manufacturer.

9. Field safety tests were also satisfactorily completed in four states when 250 test animals, ranging in age from three days old through adults were immunized with one of the prelicensing serials of pseudorabies vaccine. No adverse reaction attributable to the vaccine were observed in the test animals.

10. The results from three additional safety and efficacy tests conducted in research facilities showed that the vaccine: (1) Was safe and efficacious

when administered to three to four day old piglets by intramuscular or subcutaneous innoculation; (2) was safe in six to eight week old pigs; (3) virus was not shed from vaccinated gilts, and (4) virus was not isolated from newborn pigs nor was there any adverse effects on pigs to vaccinated gilts.

Based on the foregoing, APHIS has determined that the general distribution of the recombinant derived modified live virus pseudorabies vaccine pursuant to a product license would have no significant environmental impact on the human environment.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) regulations of the Council of Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 24th day of November, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87–27593 Filed 12–2–87; 8:45 am]

BILLING CODE 3410–37–M

Farmers Home Administration

Credit Report Fees

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces that a nonrefundable credit report fee of $27 will be charged for joint credit reports on an applicant and spouse. This charge is necessary due to the cost to the Agency in obtaining joint reports. This charge is less than the cost of $46 when ordering two individual credit reports on an applicant and spouse. The cost of ordering an individual credit report fee will remain at $23 per credit report. The credit report contractors, current prices, geographical coverage and the nonrefundable fee can be found in Exhibit A (available in any FmHA office) of Subpart B of 7 CFR Part 1910.

EFFECTIVE DATE: December 1, 1987.

FOR FURTHER INFORMATION CONTACT: Reginald J. Rountree, Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, 14th and Independence Avenue, SW. Washington, DC 20250, telephone (202)475–4209.

SUPPLEMENTARY INFORMATION: The Catalog of Federal Domestic Assistance programs affected by this notice are:

10.405 Farm Labor Housing Loans and Grants
10.410 Low-Income Housing Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.420 Rural Self-Help Technical Assistance.

Date: November 23, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–27595 Filed 11–30–87; 8:45 am]

BILLING CODE 3410–07–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Deduction in Charges of Certain Cotton Textile Products Produced or Manufactured in Haiti

November 24, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in Executive Order 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin Beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057 (July 10, 1987), has issued the directive published below to the Commissioner of Customs to be effective on November 24, 1987. For further information contact Naomi Freeman, International Trade Specialist, Office Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct charges made to the restraint limit established for Category 331 for the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. Subsequently, this same amount will be charged to the guaranteed access level established for properly certified textile products in Category 331 which are assembled in Haiti from fabric formed and cut in the United States and exported from Haiti during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Background

On January 13, 1987 a notice was published in the **Federal Register** (52 FR 1371) announcing import restraint limits for certain cotton and man-made fiber textile products, including Category 331, produced or manufactured in Haiti and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

A further notice was published in the **Federal Register** on February 27, 1987 (52 FR 6053) which announced guartanteed access levels for properly certified textile products assembled in Haiti from fabric formed and cut in the United States, including products in Category 331.

Documentation has been provided to the U.S. Government establishing that goods in Category 331, which were charged to the designated consultation level because of the unavailability of proper documentation (CBI Export Declaration (Form ITA–370P)), were assembled exclusively from U.S. formed and cut fabric and qualified for entry under the guaranteed access level. Based on this documentation, the U.S. Government has agreed to deduct these charges from the designated consultation level for Category 331. Subsequently, these same charges will be made to the guaranteed access level established for Category 331.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754, November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected

by exchange of letters dated September 26 and 30, 1986, between the Governments of the United States and Haiti, I request that, effective on November 24, 1987 you deduct 94,944 dozen pairs from the charges made to the import restraint limit established in the directive of December 31, 1986 for cotton textile products in Category 331, produced or manufactured in Haiti and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

This letter will be published in the **Federal Register.**

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-27599 Filed 11-30-87; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Peru

November 25, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 2, 1987. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits for certain cotton textile products for the twelve-month period which began on May 1, 1987 and extends through April 30, 1988.

Background

A CITA directive dated April 13, 1987 (52 FR 12449) established limits for certain specified categories of cotton and wool textile products, including Categories 313, 315, 317, 319, 320 and 338/339, produced or manufactured in Peru and exported during the agreement year which began on May 1, 1987 and extends through April 30, 1988. Pursuant to a request from the Government of Peru and under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, between the Governments of the United States and Peru, the current restraint limits for Categories 313, 315, 317, 317pt., 319, 320, 320pt., 338/339 and 338pt./339pt., are being adjusted, variously, by application of swing and carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 25, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on April 13, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of cotton and wool textile products, produced or manufactured in Peru and exported during the twelve-month period which began on May 1, 1987 and extends through April 30, 1988.

Effective on December 2, 1987, the directive of April 13, 1987 is amended to include adjustments to the following previously established restraint limits, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended: [1]

Category	Adjusted 12 Mo limit [1]
313	22,239,682 square yards.
315	4,895,272 square yards.
317	21,683,261 square yards of which not more than 6,504,978 square yards shall be in Category 317-S (only TSUSA items 320.— through 331.—, with statistical suffixes 50, 87 and 93).
319	25,909,660 square yards.
320	19,474,391 square yards of which not more than 5,439,191 square yards shall be in Category 320pt. (only TSUSA items 320.—, 321.—, 322.—, 326.—, 327.— and 328.—, with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98).
338/339	532,937 dozen of which not more than 361,202 dozen shall be Category 338pt./339pt. (all TSUSA numbers except 381.0220, 381.0230, 381.4010, 381.4120, 384.0205, 384.0207, 384.0208, 384.0212, 384.0219, 384.0220, 384.0221, 384.2806, 384.2810, 384.2812, 384.2814, 384.2910, 384.2914 and 384.2915).

[1] The limits have not been adjusted to account for any imports exported after April 30, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-27581 Filed 11-30-87; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to Export Visa Arrangement and Exempt Certification System for Certain Textiles and Textile Products From India

November 24, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in Executive Order 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 25, 1987. For further information contact Pamela Smith, International Trade Specialist,

[1] The agreement provides, in part, that: (1) Specific limits may be exceeded by designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be increased for carryover and carryforward not to exceed 11 percent; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to amend the export visa arrangement to rescind the visa requirement for certain commercial samples which are valued at $250 or less and personal shipments exported from India. In addition, apparel made from handloomed fabrics, including Categories 335, 336/636, 342 and 347/348, are now subject to the export visa requirements and quantitative limits established under the agreement.

Background

A CITA directive dated November 26, 1979, as amended, was published in the **Federal Register** (44 FR 68504) which announced the establishment of an export visa arrangement and exempt certification for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India.

Under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, the Governments of the United States and India have agreed to further amend the export visa arrangement and exempt certification system.

Merchandise in TUSUSA numbers 360.0600, 360.1015, 360.1200, 360.2000, 360.7600, 360.7800, 361.4500, 361.5420 and 361.5426, as well as properly marked commercial samples, which are valued at U.S. $250 or less, and items for the personal use of the importer, do not require a visa or certification for entry and shall not be charged to the agreement levels. The requirement that merchandise in the foregoing commercial samples and personal shipments must accompany the traveler to be exempt from the visa or certification requirements has been rescinded.

For the duration of the agreement, exports of hand-made apparel products made in the cottage industry of India from handloom fabrics, including Categories 335, 336/636, 342 and 347/348, are not exempt from the visa arrangement and exempt certification requirements and are subject to quantitative limits established under the agreement.

In addition, the visa arrangement and exempt certification requirements have been amended to include the following nomenclature to be used in the certification of garments in Category 341:

Category	Description
341-Y.....	Yarn dyed (two or more colors in the warp of filling).
341-0.....	Other than yarn-dyed.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1987.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on November 26, 1979, as amended, by the Chairman of the Committee for the Implementation of Textile Agreements concerning export visa and exempt certification requirements for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India.

Effective on November 25, 1987, a visa or certification shall not be required for entry of merchandise in TSUSA numbers 360.0600, 360.1015, 360.1200, 360.2000, 360.7600, 360.7800, 361.4500, 361.5420, and 361.5426, as well as properly marked commercial samples, which are valued at U.S. $250 or less, and items for the personal use of the importer. Merchandise in the foregoing commercial samples and personal shipments need not accompany the traveler to be exempt from the visa or certification requirements.

Also effective on November 25, 1987, hand-made apparel products made in the cottage industry of India from handloom fabrics, including Categories 335, 336/636, 342, and 347/348, exported from India on and after January 1, 1987, and extending through December 31, 1991, are not exempt from the visa arrangement and exempt certification requirements and are subject to quantitative limits established under the agreement.

In addition, the following nomenclature shall be used when certifying cotton textile products in Category 341:

Category	Description
341-Y [1].....	Yarn dyed (two or more colors in the warp or filling).
341-O [2].....	Other than yarn-dyed.

[1] In Category 341-Y, only TSUSA numbers 384.4608, 384.4610 and 384.4612.

[2] In Category 341-O, all TSUSA numbers except 384.4608, 384.4610, and 384.4612.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-27578 Filed 11-30-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

[CFDA No. 84.015]

Invitation of Applications for New Awards; National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies and Foreign Language and Area Studies Fellowships Program for Fiscal Year 1988

Purpose: Makes awards to institutions of higher education for general assistance in strengthening nationally recognized centers of excellence in foreign language and area studies or international studies and for fellowship assistance to meritorious students undergoing advanced training in modern foreign languages and related area or international studies.

Priorities for National Resource Centers: The proposed regulations for the National Resource Centers Program will permit the establishment of priorities (published in 52 FR 37067 on October 2, 1987, §§ 656.21(1), 656.22(1), and 656.23). This year the Secretary has not established binding priorities for centers but, in accordance with 34 CFR 75.105(c)(1), encourages applicants to submit applications that, in addition to other plans for strengthening their programs, propose activities from among the following:

(1) Develop and implement a comprehensive plan for evaluating and improving their foreign language programs in ways compatible with developing national standards.

(2) Strengthen their language programs by adding advanced third and

fourth year language skill courses (not including literature and tutorial courses).

(3) Initiate or strengthen summer intensive language programs, in cooperation with other institutions of higher education, that offer instruction in languages not taught on a regular basis during the summer in the United States, provide instruction in introductory and intermediate courses of not less than 20 hours per week, and provide the equivalent of a full academic year's work of language training.

(4) Strengthen their language programs by increasing to ten hours of instruction per week their introductory and intermediate language skill courses.

(5) Initiate or strengthen effective linkages between language and area studies programs and professional schools, such as business, education, law, library science, and journalism.

(6) Fill gaps in course coverage in disciplines currently underrepresented in the center's basic program.

(7) Initiate or expand outreach activities in foreign language and area or international studies education for teachers in local elementary and secondary schools and in institutions of higher education.

Priorities for Foreign Language and Area Studies Fellowships: The proposed regulations for the Foreign Language and Area Studies Fellowships Program will permit the establishment of priorities (published in 52 FR 37070 on October 2, 1987, §§ 657.21(j) and 657.22) for languages, academic disciplines, professional studies, levels of language study, and world areas. The priorities established below are not weighted. In accordance with 34 CFR 75.105(c)(2)(ii), the Secretary will give priority to applicants that—

(1) Propose to make some fellowship awards to students, including those enrolled in terminal masters degree programs, who combine language and area studies with professional studies, such as business, law, or journalism (§ 657.22(a)(5));

(2) Propose to award fellowships to students studying the less commonly taught modern foreign languages (§ 657.22(a)(2)); and

(3) Will, in their selection of fellows, assign the lowest consideration to students—

(i) Who are studying French, Iberian Spanish, German, and Italian;

(ii) Who already possess language fluency equivalent to educated native speakers in the language for which the award is sought;

(iii) Who are taking the first 18 semester hours (27 quarter hours) or their equivalent in Latin American Spanish and Russian Language instruction; and

(iv) Who are taking the first 12 semester hours (18 quarter hours) in Chinese and Japanese language instruction. (§ 657.22(a) (2) and (3))

Deadline for Transmittal of Application Available: December 9, 1987.

Available Funds: The Administration's budget request for Fiscal Year 1988 does not include funds for these programs. However, applications are invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year should the Congress appropriate funds for these programs. The following estimates are based on the Fiscal Year 1987 appropriation.

National Resource Centers: Approximately $12,200,000 may be made available; these funds could support approximately 90 awards to centers at an average level of approximately $135,000. Up to 15 percent of the awards may be used for undergraduate centers and approximately 15 percent of the awards may be used for international affairs or topic-oriented centers. The remaining funds would help insure the maintenance of a minimal national capability in modern foreign languages and area studies for every major region of the world.

Foreign Language and Area Studies Fellowships: Approximately $7,550,000 may be available for the Fellowship program. Approximately 850 individual awards could be allocated by grantee institutions in Fiscal Year 1988 (600 academic year and 250 summer) at this level of funding. Under proposed § 657.31(b), the Secretary would include, in institutional grants, funds for tuition and fees as well as a subsistence allowance of $5,000 for an academic year fellowship and $1,250 for a summer intensive language fellowship. Fellowships transported to summer cooperative programs on other campuses or abroad may also include up to $500 or actual cost each in travel funds.

Project Period: Three years, beginning August 15, 1988.

Applicable Regulations: (a) When adopted in final form, the Notice of Proposed Rulemaking for the National Resource Centers Program for Foreign Language and Area Studies and for Foreign Language and International Studies, and the Foreign Language and Area Studies Fellowships Program, Parts 656 and 657, published on October 2, 1987, at 52 FR 37064, and 34 CFR Part 655, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78. Applicants should prepare their application based on the proposed regulations. If substantive changes are made when the final regulations are published, applicants will be given an opportunity to amend or resubmit their application.

For Applications or Information Contact: Ann I. Schneider, U.S. Department of Education, Mail Stop 3308, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 732-3299.

Program Authority: 22 U.S.C. 1122.

Dated: November 23, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-27501 Filed 11-30-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order With Diamond Shamrock R & M, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted as final the Consent Order with Diamond Shamrock R & M, Inc. (Diamond) executed on September 18, 1987, and published for comment in 52 FR 37204 on October 5, 1987.

As required by 10 CFR 205.199J, DOE provided a period of thirty days following publication of the Notice of Proposed Consent Order for the submission of comments. The ERA received no comments in response to this Notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Office of Special Counsel, Economic Regulatory Administration, RG-30, U.S. Department of Energy, Washington, DC 20585, (202) 586-8900.

Copies of the Consent Order may be obtained free of charge by written request to "Diamond Consent Order Request" at the above address or by

calling Dorothy Hamid at the above telephone number. Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: On October 5, 1987, DOE published notice in the **Federal Register**, Vol. 52 at page 37204 announcing the execution of a Proposed Consent Order between Diamond and DOE. In compliance with the DOE Regulations, that Notice, and a Press Release issued October 7, 1987, summarized the Proposed Consent Order and the relevant facts.

As a result of an audit of Diamond's compliance with the Federal petroleum price and allocation regulations, the Economic Regulatory Administration (ERA) tentatively concluded that Diamond had overcharged in certain crude oil transactions during the period January 1, 1980, through January 27, 1981. Diamond disputed ERA's audit findings and denied any overcharge liability. No formal allegations of violations were issued against Diamond.

The Consent Order resolves these matters and all other civil and administrative claims or causes of action regarding Diamond's compliance with and obligations under the Federal petroleum price and allocation regulations during the period covered by this Consent Order.

As consideration, Diamond has agreed to pay $15 million over a period of three years, plus interest on any unpaid balances. ERA will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, to distribute the amounts so paid.

As noted, no comments were received in response to the Notice of the Proposed Consent Order. Accordingly, ERA has determined to adopt the Proposed Consent Order without modification as a final order of the DOE, pursuant to 10 CFR 205.199J. The Consent Order becomes effective upon publication of this notice.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 87–27562 Filed 12–1–87; 8:45 am]

BILLING CODE 6450–01–M

Final Consent Order With Ball Marketing Inc., Charles Goss, Baker R. Littlefield and Robert L. McAdams

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on Proposed Consent Order.

The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Ball Marketing, Inc. ("BMI"), Charles Goss, Baker R. Littlefield and Robert L. McAdams (collectively "respondents") shall be made final as proposed. *See* 52 FR 39680 (October 23, 1987). The Consent Order resolves matters relating to Respondents' compliance with the federal price and allocation regulations for the period August 17, 1973 to January 27, 1981. To resolve those matters, Respondents' will pay the DOE $700,000 over three years, plus interest on deferred payments. Persons claiming to have been harmed by Respondents' alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the BMI Consent Order final was made after the expiration of the thirty-day comment period provided by 10 CFR 205.199J, without receipt of any comment. Accordingly, the Consent Order, as proposed, is made a final order of DOE, effective on the date this notice is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Noah S. Baer, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–4432.

Issued in Washington, DC on November 23, 1987.

Milton C. Lorens,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 87–27561 Filed 11–30–87; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA C&E 88–01; Certification Notice–7]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act; Pepperell Power Associates et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Three owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type facility	Megawatt capacity	Location
Pepperell Power Associates, Pepperell, ME	11–9–87	Combined Cycle	35	Pepperell, ME
Altresco, Inc., Denver, CO	11–2–87	Combined Cycle	156	Pittsfield, MA
Seminole Electric Cooperative, Inc., Tampa, FL	10–29–87	Combined Cycle	660	Potential sites: Bradford County, DeSoto County, Hardee County, Manatee County, Polk County, Putnam County, Sumter County, Taylor County.

Amendments to FUA on May 22, 1987 (Pub. L. 100–42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC on November 24, 1987.

Robert L. Davies

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–27597 Filed 11–30–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP88–42–000]

Kansas Power and Light Co., Complainant, and Williams Natural Gas Co., Respondent; Complaint

November 24, 1987.

Take notice that on October 22, 1987, The Kansas Power and Light Company (Complainant), P. O. Box 889, Topeka, Kansas 66601, filed in Docket No. CP88–42–000 a complaint pursuant to § 385.206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), against Williams Natural Gas Company (Respondent) for engaging in the transportation of natural gas in interstate commerce without prior Federal Energy Regulatory Commission certification, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Complainant states that on March 10, 1961, the Federal Power Commission authorized Cities Service Gas Company, a predecessor of Respondent, to construct facilities and deliver up to 16,500 Mcf per day of natural gas to Solar Nitrogen Chemicals, Inc. (Solar), in Jasper County, Missouri, for processing and reforming uses and for boiler fuel all in the manufacturing of ammonia and urea. Complainant further states that Atlas Powder Company, a subsidiary of Tyler Corporation (Atlas) owns and operates a plant, in the vicinity of the Solar plant, which is used to manufacture high explosives. Complainant believes that Tyler Corporation has acquired the facilities of the Solar plant.

It is claimed that on May 15, 1987, Atlas terminated its gas service contract with Complainant. Complainant alleges that Atlas has constructed a pipeline from its plant to the Solar plant and that Respondent is providing service to Atlas in lieu of its delivery to Solar. It is further alleged that Atlas proposes to provide natural gas from the Solar plant to other plants in the area.

Compainant requests that proceedings be instituted against Respondent requiring Respondent to show cause why it should not be held in violation of the Natural Gas Act and the Commission's Regulations. Complainant further requests that Respondent be ordered to cease and desist from any further transportation of gas to Atlas.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before December 24, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Respondent's answer to the complaint shall also be due on or before December 24, 1987.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87–27574 Filed 11–30–87; 8:45]

BILLING CODE 6717–01–M

[Docket Nos. ST87–2155–000 and ST87–2229–000]

Seagull Shoreline System; Staff Panel

November 24, 1987.

Pursuant to the Commission's "Order Instituting Rate Proceedings and Consolidating Dockets", issued September 10, 1987, a staff panel will convene to afford the parties an opportunity to present data, views, and arguments with respect to Seagull Shoreline System's proposed transportation rates under NGPA section 311. The staff panel will convene Tuesday, December 1, 1987 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Interested persons and staff are permitted to attend.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87–27572 Filed 11–30–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–26–021]

Tennessee Gas Pipeline Co., Filing Revised Tariff Sheets

(November 24, 1987)

Take notice that on November 20, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing the following tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff to be effective August 21, 1987:

Second Substitute First Revised Sheet No. 107
Second Substitute First Revised Sheet No. 109
Second Substitute Original Sheet No. 112
Second Substitute First Revised Sheet No. 207
Second Substitute First Revised Sheet No. 251

Tennessee states that this filing is in compliance with the Commission's Order in this proceeding issued November 9, 1987.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 1, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87–27573 Filed 11–30–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–58–000]

United Gas Pipe Line Co. v. Southern Natural Gas Co.; Complaint

November 24, 1987.

Take notice that on October 30, 1987, United Gas Pipe Line Company (United),

600 Travis, Houston, Texas 77002, filed in Docket No. CP88–58–000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure and Sections 7 and 16 of the Natural Gas Act, a complaint seeking reparation for the harm caused by, and flowing from, Southern Natural Gas Company's (Southern) unauthorized abandonment of a certificated service.

United states that it has served as one of the major suppliers of natural gas to Southern and its customers for over thirty years. In order to serve those needs, United asserts that it constructed, operated and maintained an extensive natural gas pipeline system and maintained the necessary gas supply contracts with producers in order to be able to deliver the quantities of gas called for by Southern. United notes that historically, Southern purchased natural gas from United in quantities approximating its contract demand, but beginning in 1982 Southern's annual purchases from United began to decline precipitously and ceased entirely in February of 1984. United further states that although Southern's two service agreements with United were scheduled to expire on October 1985, Southern nevertheless reaffirmed its need to maintain United as a principal supplier, albeit at a reduced level of 175,000 Mcf per day by executing a new Service Agreement to become effective November 1, 1985, for a term of 15 years (1985 Agreement).[1] United states that the Commission order authorizing the 1985 Agreement noted that such agreement reflected "an effort by both companies to realign their contracts to reflect current marketing realities".

United further maintains that the execution of the 1985 Agreement by Southern was evidence that Southern would pursue a least-cost purchasing plan whereby Southern would make incremental purchases from its lowest priced available supplies. Consequently, United reasons that based upon this evidence, United reasonably expected that it would be required to maintain a supply portfolio sufficient to serve Southern's MDQ when and if called upon by Southern throughout the term of the 1985 Agreement. Inexplicably, however, United notes Southern deviated substantially from a least-cost purchasing policy to the detriment of United, United's customers, and Southern's customers.

United points out that during calendar year 1986, Southern purchased an average of 173,000 Mcf of gas per day, or almost exactly Southern's contract quantity with United, at a price which exceeded United's sales commodity rate in effect during the same period and that these purchases resulted in a cost increase borne by Southern's customers in excess of $85 million in 1986 alone.

United also points out that this inequity has not gone unnoticed by Southern's customers and that in Southern's current PGA proceeding, Alabama Gas Corporation filed a protest requesting explanations of, among other things: (1) Southern's purchases of high-priced gas; (2) a high-priced WACOG.[2]

United asserts that Southern continued purchasing these higher priced supplies in order to avoid incurring take-or-pay liabilities under its own producer contracts which resulted in (1) increasing the current cost of gas to Southern's customers; (2) the exportation of Southerns' take-or-pay problems to United and United's other customers and; (3) an increase in United's average cost of gas because it prevents United from making discretionary purchases of lower cost gas.

According to United, Southern has twice manifested an intent to abandon permanently its purchases from United. First, United claims, was in United's general rate proceeding in Docket No. RP87–52–000, where the Commission in its Order issued July 23, 1987, gave United's customers the right to renominate their Monthly Entitlement Quantities (MEQs) in order to more accurately identify the customers' expected purchases from United.[3] United notes that under the terms of its filed tariff, the renominated MEQs could never be increased by more than 110 percent of the MEQ in the previous year. In August of 1987 Southern nominated its MEQ's at a level of zero for every month. In United's view, the nomination of zero MEQ's has made clear Southern's intent not to purchase any quantity of gas from United in the future because the other provisions of United's tariff would prevent Southern from ever again increasing its MEQ above the zero level.

Also, United claims, as a belated effort to legitimize its unauthorized abandonment of service, Southern sent a letter to United dated October 16, 1987, wherein it "offered to cancel" the 1985 Agreement and threatened United with "appropriate subsequent filings" to achieve this result if United did not accept Southern's offer. Thus, United continues, only two years into the 15-year term of the 1985 Agreement, Southern has in effect told United that it intends to attempt to terminate the 1985 Agreement and permanently discontinue its portion of the service rendered thereunder, notwithstanding its representation made to United only two years earlier and without regard to the adverse impact upon Southern's customers.

United asserts that it has honored its service agreements by standing ready to serve Southern and its customers with a firm supply of natural gas, which supply and its attendant maintenance costs,[4] was contracted for in reliance upon Southern's express and implied representations to United and to the Commission.

In requesting remedies for Southern's Natural Gas Act violation, United cites section 16 of the Natural Gas Act which affords the Commission wide latitude in imposing remedies to achieve the legislative objectives of the Natual Gas Act. United requests that the *status quo* be restored in this case by requiring Southern to compensate United and its customers for the take-or-pay costs incurred by United attributable to Southern's permanent and substantial

[1] On September 30, 1985, in United's proceeding at Docket No. CP85–310–000, *et al.*, the Commission issued an order authorizing the abandonment of a portion of the prior service provided under the expired service agreements, and concurrently authorized service to commence under the 1985 Agreement.

[2] *Southern Natural Gas Company* (Docket Nos. TA88–1–7–000 and RP87–108–000), 40 FERC (CCH) ¶ 61,370 (1987) (Mimeo at pp. 6–7).

[3] *United Gas Pipe Line Company*, 40 FERC (CCH) ¶ 61,066 (1987).

[4] In Order No. 380, the Commission issued a final rule eliminating variable costs from the minimum commodity charge portion of natural gas pipeline sales tariffs. The Commission found the use of minimum commodity bills to recover variable costs to be anticompetitive and may result in unjust and unreasonable rates and charges. The Commission may impose the remedies suggested herein without contravening the mandates of Order No. 380 because the take-or-pay costs incurred as a result of these section 7(b) violations are not "variable costs not incurred" in providing service to Southern. Rather, United's take-or-pay costs are costs that have in fact been incurred and will in fact be incurred in the future. Those costs in turn are directly attributable to the service that United has rendered by entering into contracts with producers in anticipation of continuing its service throughout the term of the 1985 Agreement. Such costs are not within the purview of those costs eliminated by Order No. 380. *See* FERC Stats. and Regs. [1982–1985] (CCH) ¶ 30,571 (1984), *aff'd. Wisconsin Gas* v. *FERC*, 770 F.2d 1144 (D.C. Cir. 1985).

reduction in purchases from United. United states that these costs include those attributable to past periods as well as those costs incurred by United to buy-out or buy-down contracts for the period corresponding to the term of the 1985 Agreement. United maintains that requiring Southern to at least be responsible for these costs would maintain an equitable allocation of cost responsibility to Southern and protect United's remaining customs from having to bear an equally inequitable share of those costs.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before December 24, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint are also due on or before December 24, 1987.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27571 Filed 11-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-8-001]

United Gas Pipe Line Co., Filing of Revised Tariff Sheets

November 24, 1987.

Take Notice that on November 18, 1987, United Gas Pipe Line Company ("United") tendered for filing, pursuant to Section 311 of the Natural Gas Policy Act of 1978 and Section 4 of the Natural Gas Act, the following revised tariff sheets to its FERC Gas Tariff First Revised Volume No. 1 with a proposed effective date of November 1, 1987.

Rate Schedule FTS

Substitute Second Revised Sheet No. 48-A
Substitute Second Revised Sheet No. 48-B
Substitute First Revised Sheet No. 48-C1
Substitute First Revised Sheet No. 48-C3
Substitute First Revised Sheet No. 48-C7
Substitute First Revised Sheet No. 48-C8
Substitute First Revised Sheet No. 48-C9
Substitute First Revised Sheet No. 48-C13

Rate Schedule ITS

Substitute First Revised Sheet No. 48-D
Substitute Original Sheet No. 48-D1
Substitute Original Sheet No. 48-E1
Substitute Original Sheet No. 48-E3
Substitute Original Sheet No. 48-E4
Substitute Original Sheet No. 48-E7
Substitute Original Sheet No. 48-E8
Substitute Original Sheet No. 48-E9
Substitute Original Sheet No. 48-E12

United states that these tariff sheets, consisting of revised tariff sheets in Rate Schedules FTS and ITS, are intended to comply with the Commission's October 29, 1987 "Order Accepting for Filing and Suspending Tariff Sheets Subject to Refund and Conditions, Granting Intervention, and Convening Technical Conference" in Docket No. RP88-8.

Any person desiring to be heard or to protest with said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Such motions or protests should be filed on or before December 1, 1987 Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27570 Filed 11-30-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases filed; Week of September 25 Through October 2, 1987

During the Week of September 25 through October 2, 1987, the appeals and applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

November 24, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 25 through Oct. 2, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 4, 1987	Kenneth Walker, Abilene, TX	KRZ-0068	Interlocutory. If granted: The October 16, 1984, Proposed Remedial Order issued to Southwestern States Marketing Corporation and Kenneth Walker would be dismissed.
Sept. 28, 1987	Amoco/New York, Albany, NY	RM21-87	Request for modification/rescission in the second stage refund applications. If granted: The August 13 1987, decision and order issued to New York (case No. RQ21-385) would be modified regarding the state's application for refund in the Amoco second stage refund proceeding.
Do	Coalition for Safe Power, Portland, OR	KFA-0125	Appeal of an information request denial. If granted: The Coalition for Safe Power would receive a waiver of duplication fees for access to the Hanford Site Waste Management Units Report.
Sept. 29, 1987	Amoco/Colorado, Denver, CO	RM251-86	Request for modification/rescission in the second stage refund proceeding. If granted: The January 7, 1987, decision and order issued to Colorado (case No. RQ251-336) would be modified regarding the state's application for refund in the Amoco second stage refund proceeding.
Do	Economic Regulatory Administration, Washington, D.C.	KES-0006	Request for stay. If granted: Economic Regulatory Administration would receive a stay of the proceedings involving a petition for special redress (case No. KEG-0014) filed by the Economic Regulatory Administration in regards to GHR Energy Corp.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Sept. 25 through Oct. 2, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 30, 1987	Henry Petroleum Corp., Washington, D.C.	KEF-0098	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR, Part 205, Subpart V, in a connection with the funds obtained through a Consent Order with Henry Petroleum Corp.
Oct. 1, 1987	Arizona, Phoenix, AZ	KEG-0018	Petition for special redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for the stripper well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/21/87	Miears and Associates, Inc.	RF225-10914.
9/3/87	Amoco/Oklahoma	RQ251-401.
9/3/87	Coline/Oklahoma	RQ2-402.
9/3/87	National Helium/Oklahoma	RQ3-403.
9/3/87	OKC/Oklahoma	RQ13-404.
9/25/87 thru 10/2/87.	Crude Oil Refund Applications Received.	RF272-6926 thru RF272-7359.
9/15/87 thru 10/2/87.	Gulf Oil Refund Applications Received.	RF300-626 thru RF300-943.
5/28/87	Amoco/Illinois	RQ251-405.
9/28/87	Cargill, Inc.	RF270-2490.
9/28/87	Excel Corporation	RF270-2491.
5/26/87	Cargo Carriers	RF271-232.
10/5/87	Searlight Co., Inc.	RF299-19.
10/5/87	Mobil-Teria Catering Co., Inc.	RF299-20.
10/5/87	Engleson & Van Liere, Inc.	RF299-21.

[FR Doc. 87-27598 Filed 11-30-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 28 Through October 2, 1987

During the week of September 28 through October 2, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Miller, Nash, Wiener, Hager & Carlsen, 9/29/87, KFA-0117

The law firm of Miller, Nash, Wiener, Hager & Carlsen (Miller) filed an Appeal of a fee waiver determination issued to it by the Bonneville Power Administration (BPA), Department of Energy (DOE), in connection with a request for documents under the Freedom of Information Act (FOIA). In refusing to waive search and duplication fees, BPA stated that since the public utility clients on whose behalf Miller filed the FOIA request were in litigation with the agency, their interest in obtaining the information was primarily private rather than public. In its Appeal, Miller asserted that thousands of ratepayers of the utilities would benefit from a waiver of fees, and that such a waiver would therefore be in the public interest.

In considering the Appeal, the DOE noted that prior to Miller's FOIA request the FOIA provisions concerning fee waivers had been amended. Accordingly, the DOE applied the public interest criteria in the amended FOIA. Under those standards, the DOE found that Miller was not entitled to a waiver of fees, since (i) the litigation in furtherance of which it had made its FOIA request clearly involved a commercial interest; and (ii) there was no showing that the information obtained would contribute to the understanding of the operations of government and would be effectively communicated to the public at large. The DOE also noted that, for similar reasons, Miller would not have been entitled to a waiver of fees under the FOIA prior to its amendment. Accordingly, Miller's Appeal was denied.

USA Petroleum Corp., 10/2/87, KFA-0115

USA Petroleum Corp. (USAP) filed an Appeal from a denial by the Office of Administration Services of the Economic Regulatory Administration (ERA) of the Department of Energy of a Request for Information which the firm submitted under the Freedom of Information Act (FOIA). The Appeal was granted in part, denied in part, and remanded for further consideration in all other respects. In its determination, the DOE first rejected USAP's claim that the submitter, Atlantic Richfield Company (ARCO), waived confidentiality with respect to most of the information sought. The DOE next found that the release of original and resubmitted Refiner's Monthly Cost Allocation Reports (RMCARs) filed by ARCO with the DOE during the period of price controls was unlikely to injure ARCO's present competitive position and therefore those documents were improperly withheld from disclosure under Exemption 4 of the FOIA. However, the DOE found that ARCO's post-decontrol RMCARs contain commercially sensitive information which should be withheld under Exemption 4.

The DOE also found that the ERA improperly withheld notices filed by ARCO with the DOE differentiating the product "gasoline" by grade and type. With the exception of a February 1977 notice, the DOE found that none of the requested notices contained any commercial data or industrial secrets and therefore ordered such notices released to USAP. Because comments submitted by ARCO during the proceeding suggest that the February 1977 notice contains industrial secrets, the DOE remanded the matter to the ERA to determine whether any non-confidential material can be segregated from that document.

The DOE also remanded additional ARCO cover letters and applications to refile RMCARs so that ERA may determine whether they contained any sensitive commercial data which should be withheld under Exemption 4. Finally, the DOE instructed the ERA to consider whether DOE determinations issued to ARCO concerning the firm's RMCARs and gasoline cost allocations contain any deliberative materials which should be withheld under Exemption 5 of the FOIA.

Motion for Evidentiary Hearing

Theodore M. Ragsdale, 10/2/87, KRH-0002

Theodore M. Ragsdale filed a Motion for Evidentiary Hearing in suport of his objections to an Amended Proposed Remedial Order issued to him and Salem Ventures, Inc., on April 24, 1985. The APRO alleged that Ragsdale participated in a crude oil layering scheme. The DOE partially granted Ragsdale's Motion so he might present testimony regarding: (i) Services he claims Salem Ventures performed in connection with the transactions cited in the APRO; (ii) reasons he should not be held personally liable for Salem Ventures' alleged regulatory violations; (iii) trading losses he claims were incurred by Salem Ventures as a result of the transactions cited in the APRO.

Refund Applications

Acme Truck Line, Inc., et al., 10/2/87, RF270–1755 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE dismissed the claims of twenty-four trucking companies. Five of the applications were dismissed because the firms' applications failed to meet the 250,000 gallon threshold amount after their claims were reduced by ineligible gallons claimed on behalf of owner-operators. The remaining nineteen applications were dismissed for lack of information after repeated requests by the DOE for further data.

American Commercial Lines, Inc., 10/1/87, RF271–186

On October 1, 1987, the Office of Hearings and Appeals (OHA) issued a Decision and Order granting the Application for Refund from the Rail and Water Transporters Escrow filed by the American Commercial Lines, Inc. (ACL). ACL's refund will be based on its purchases of 331,358,131 gallons of U.S. petroleum products during the Stripper Well Settlement Period.

Antelope Valley Bus Company, et al., 10/2/87, RF270–2049 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the volumes of refined petroleum products claimed by twelve trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the twelve firms. The total amount of gallons approved in this Decision and Order is 764,524,617.

Beacon Oil Company/Val's Beacon, Cotta & Son Beacon Distributing, 10/1/87, RF238–41, RF238–53

The DOE issued a Decision and Order concerning the Applications for Refund filed on behalf of Val's Beacon (Val's) and Cotta & Son Beacon Distributing (Cotta), two resellers of Beacon Oil Company petroleum products. The firms applied for refunds based on the procedures outlined in *Beacon Oil Company*, 14 DOE ¶ 85,011 (1986), as modified. The firms did not attempt to demonstrate injury with respect to their diesel fuel purchases nor did they try to qualify for small claims refunds of $5,000 by showing that they passed through to their customers the previously received motor gasoline credit. Accordingly, Val's and Cotta's Applications for Refund were denied.

Brandt Transportaton, Inc., 9/29/87, RF270–2488

The DOE issued a Decision and Order revising a previous Decision which granted refunds to several applicants in the Surface Transporters refund proceeding. *Utak, Inc. et al.*, 16 DOE ¶xx, Nos. RF270–585 *et al.* (September 18, 1987). Due to a clerical error, the volume approved for one of the applicants, Brandt Transportation, Inc. (Case No. RF270–690), was incorrect. The DOE modified the September 18, 1987 Decision to reduce the volume approved for Brandt.

C.R. England & Sons, Inc. et al., 10/2/87, RF270–1752 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the volumes of refined petroleum products claimed by fifty-five trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the fifty-five firms. The total amount of gallons approved in this Decision and Order is 925,133, 871.

Campbell Taggart, Inc. et al., 9/29/87, RF270–1341 et al.

The Department of Energy (DOE) issued a Decision and Order approving applications for refund from the Surface Transporters Escrow filed by ten transportation companies. Each company based its application on purchases of diesel fuel or motor gasoline. The total gallonage approved in this Decision was 151,164,738.

Columbia Lighting, Inc., Wagner Division, Cooper Industries Inc., 9/29/87, RF270–8, RF270–9.

The Department of Energy (DOE) issued a Decision and Order concerning Petitioners' Motions for Reconsideration. The motions were filed by the parent company and an affiliate of two companies which were granted a refund in the Surface Transporter proceeding by the Office of Hearings and Appeals. Petitioners sought the nullification of the applications for refund and related waivers and releases which bound the Petitioners from filing in the Subpart V proceeding. The DOE determined that companies which file applications for the M.D.L. 378 escrow and their parents, subsidiaries, affiliates, successors and assigns are bound by the waiver and release language contained in those applications and thus precluded from filing in the Subpart V proceeding.

Conoco, Inc./Triton Energy Corp., Willhite Oil Co., Chemical Leaman Tank Lines, Robinson's Conoco, 9/30/87, RF220–167, RF220–345, RF220–369 RF220–442

The DOE issued a Decision and Order concerning four applications for refund filed by purchasers of covered products from Conoco, Inc. Each firm applied for a refund based on the procedures outlined in *Conoco, Inc.*, 13 DOE ¶ 85,316 (1985), which governs the distribution of consent order funds received from Conoco. Each applicant submitted adequate documentation of its purchases from Conoco. After examining the applications and supporting documentation, the DOE determined that the applicants should receive refunds totalling $3,521, representaing $2,480 in principal and $1,041 in interest.

Cooper Jarrett Inc. et al., 10/2/87, RF270–260 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by five companies and will use those gallonages as a basis for the refund that will ultimately be issued to the five firms.

Dorchester Gas Corporation/Al's Bait & Self Service, Wilson Petroleum, Inc., Schaapveld Oil Company, 10/1/87, RF253–17, RF253–19, RF253–20

The Department of Energy (DOE) issued a Decision approving three Applications for Refund in the Dorchester Gas Corporation refund proceeding. The three claimants demonstrated that they were direct purchasers of Dorchester covered products during the consent order period. Each applicant elected to limit its claim to the established threshold amount. Thus, the claimants were not required to demonstrate injury, and a small claims refund of $5,000 in principal and $1,537 in interest was approved for each of the three applicants.

Getty Oil Company/ A.C. Taylor & Son, et al., 9/28/87, RF265–943 et al.

The DOE issued a Decision and Order concerning 44 Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted

information indicating the volume of its Getty purchases. In 38 of these cases, the applicants were eligible for a claim below the $5,000 threshold. In the remaining six cases, the applicants elected to limit their claims to $5,000. The total refunds approved in this Decision are $169,603, representing $84,860 in principal and $84,743 in accrued interest.

Greyhound Lines, Inc., 10/1/87 RF270–2489

The Office of Hearings and Appeals (OHA) of the Department of Energy issued a Decision and Order rescinding a Decision and Order which its issued to Greyhound Lines, Inc. (Lines) on July 10, 1987. In the July 10 Decision and Order, the OHA approved Lines' application for a Surface Transporter refund. The OHA determined that Lines had inadvertently submitted an application for a Surface Transporter refund when its parent company, The Greyhound Corporation, was entitled to submit the application.

International Shoe Company et al., 9/29/87, RF270–2053 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the volumes of refined petroleum products claimed by thirty-five trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the thirty-five firms. The total amount of gallons approved in this Decision and Order is 190,085,574.

Lafferty Trucking Company et al., 10/1/87, RF 270–472 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by 18 transportation companies and will use those gallonages as a basis for the refund that will ultimately be issued to the 18 firms.

Manley Truck Line, Inc., Tower Lines, Inc., J. Marlin Ernst & Sons, Inc., 9/30/87, FR 270–2416, RF270–2478, RF270–2479

The DOE issued a Decision and Order approving Applications for Refund filed by three trucking companies seeking a portion of the $10.75 million escrow fund established for Surface Transporters. All three firms estimated the petroleum product consumption of their fleets using methods the DOE found reasonable. The total volume approved for the three firms in this Decision is 14,966,686 gallons.

Matlack, Inc. et al., 10/2/87, RF270–486 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by five transportation companies and will use those gallonages as a basis for the refund that will ultimately be issued to the five firms.

McCleary Oil Company/Fannett-Metal School District, Phoenix Clothing, Chambersburg Area School District, 9/29/87, RF297–2, RF297–3, RF297–4

The DOE issued a Decision and Order concerning three Applications for Refund filed by end users of McCleary Oil Company petroleum products. Each firm applied for a refund based on the procedures outlined in *McCleary Oil Company*, 16 DOE ¶ 85,128 (1987), governing the disbursement of settlement funds received from McCleary pursuant to an August 15, 1979 Consent Order. Since all of the applicants were end users of McCleary products, they were presumed to have been injured by McCleary's alleged overcharges. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totalling $937, representing $487 in principal and $450 in accrued interest.

Porter Oil Co., 10/2/87, RF270–792

The Department of Energy (DOE) issued a Decision and Order denying the Application for Surface Transporter Refund submitted by Porter Oil Co. from the Surface Transporters Escrow pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. The DOE determined that Porter's receipt of a refund from the escrow account established for Resellers made it ineligible to receive a Surface Transporter refund.

South Carolina Electric Gas Company, 10/2/87, FR270–1664

The Department of Energy (DOE) issued a Decision and Order analyzing an application for a Surface Transporter Refund filed by South Carolina Electric & Gas Company (Carolina Electric), an investor owned utility that had received a refund from the Utilities Escrow. The DOE denied Carolina Electric's claim because the Surface Transporter claimants to waive their claims to all M.D.L. 378 escrow funds except the Surface Transporters escrow. Since Carolina Electric had received a refund from the Utilities Escrow, the DOE found that the company could not meet the terms of its Surface Transporters Release and that the firm's release was therefore invalid.

Spentonbush Transport Service, Inc., 10/1/87, FR271–83

On October 1, 1987, the Office of Hearings and Appeals (OHA) issued a Decision and Order granting the Application for Refund from the Rail and Water Transporters Escrow filed by Spentonbush Transport Service, Inc. (STS). STS's refund will be based on its purchases of 111,581,492 gallons of U.S. petroleum products during the Stripper Well Settlement Period.

Station Wagon Service, Inc. et al., 10/1/87, RF270–150

The Department of Energy (DOE) issued a Decision and Order approving applications for refund from the Surface Transporter Escrow filed by six companies. Four of the companies were either motor carriers of passengers engaged in charter services or privately-owned school bus companies. The other two companies are a taxicab operator and a limousine service which used vans and minibuses. The products claimed include motor gasoline, lubricating oil and diesel fuel. The DOE approved each company's purchase volumes without adjustment.

Swan Brothers, Inc., Reliable Moving & Storage Co., 10/1/87, RF270–2387, RF270–2405

The DOE issued a Decision and Order approving Applications for Refund from the Surface Transporters Escrow filed by a bakery and a moving company. Each firm estimated the petroleum product consumption of its truck fleet using methods the DOE found reasonable. The total volume approved for the two firms in this Decision is 3,184,740 gallons.

The Standard Products Co., Union Trucking Co., 9/28/87, RF270–100, RF270–102

The Department of Energy (DOE) issued a Decision and Order approving the Applications for Refund submitted by The Standard Products Co. and Union Trucking Co. from the Surface Transporters Escrow established as the result of the Stripper Well Settlement Agreement. Standard, which operated a private fleet of trucks, is the parent

company of Westbourne Service Center, which in turn owns Union, a "for hire" carrier. After examining the figures presented, the DOE found that there was reasonable assurance that the information presented in the claims was accurate. Accordingly, the DOE approved the two companies' purchase volumes.

United Agricultural Transportation, Assoc. of America Marketing, Co-Op et al., 10/2/87, RF270-1068 et al.

The Department of Energy (DOE) issued a Decision and Order approving applications for refund from the Surface Transporters Escrow filed by seven transportation companies. Each company based its application on purchases of diesel fuel or motor gasoline. The total gallonage approved in this Decision was 88,187,925.

Dismissals

The following submissions were dismissed:

Case name	Case No.
Belford Trucking Co., Inc	FR270-608
Bouyea Baking Co., Inc	RF270-1650.
Canadian-Pacific Transport	FR270-326.
Carmi Light & Water	FR225-6190
	RF225-6191.
David Graham Company	RF270-1744.
El Paso Natural Gas Co	RF225-1868.
George Transfer, Inc	RF270-575.
Highland Express Inc	RF270-281.
Jack Link Truck Line	RF270-71
Mohasco Upholstered Furniture Corp	RF270-1376
Newman and Pemberton Corp	RF270-456
Northern Natural Gas Co	RF225-1053
Oak Harbor Freight Lines, Inc	RF270-1743
Premier Die Casting Co	RF225-290
Pineywoods Baptist Encampment	RF225-127
Satanta Cooperative Grain Co	RF270-872.
Schneider Transport, Inc	RF270-1583.
Shepard's Inc	RF270-1288.
So. Huntington Water District	RF225-7268
	RF225-7269.
Tecumseh Products Co	RF225-5142.
Vermont Gas Systems, Inc	RF225-3764.
Younger Transportation, Inc	RF270-1727.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 24, 1987.

[FR Doc. 87-27599 Filed 11-30-87; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Period of October 12 through October 23, 1987

During the period of October 12 through October 23, 1987, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC. 20585.

November 24, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

Tampimex Oil Corp. New Orleans, Louisiana, KRO-0570 Crude Oil

On October 22, 1987, the Controller of California, represented by Lobel, Novins, Lamont, & Flug, 1275 K Street NW., Washington, DC 20036, filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration (ERA) issued to the firm on September 24, 1987. In the PRO the ERA found that during the period January 1979 through December 1980, Tampimex engaged in the practice of layering in contravention of 10 CFR 212.186, 210.62 (c) and 205.202. According to the PRO the violation resulted in $3,669,009.81 of overcharges.

[FR Doc. 87-27600 Filed 11-30-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3296-9]

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designations

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 as amended on July 1, 1987 (52 FR 24727), has designated three more reference methods for the determination of ambient concentrations of particulate matter measured as PM_{10}. The new reference methods are gravimetric manual methods which utilize specially-designed PM_{10} samplers for particle collection. The new designated methods are identified as follows:

(1) RFPS-1287-063, "Sierra-Andersen or General Metal Works Model 1200 PM_{10} High-Volume Air Sampler System", consisting of a Sierra-Andersen or General Metal Works Model 1200 PM_{10} Size-Selective Inlet and any of the high-volume air samplers identified as SAUV-10H, SAUV-11H, GMW-IP-10, GMW-IP-10-70, GMW-IP-10-801, or GMW-IP-10-8000, which include the following components:

Anodized aluminum high-volume shelter with either acrylonitrile butadine styrene plastic filter holder and motor/blower housing or stainless steel filter holder and phenolic plastic motor/blower housing;
0.6 hp motor/blower;
Pressure transducer flow recorder;
Either a digital timer/programmer, seven-day mechanical timer, six-day timer/programmer, or solid-state timer/programmer;
Elapsed time indicator; and
Filter cartridge.

(2) RFPS-1287-064, "Sierra-Andersen or General Metal Works Model 321-B PM_{10} High-Volume Air Sampler System", consisting of a Sierra-Andersen of General Metal Works Model 321-B PM_{10} Sizes-Selective Inlet and any of the high-volume air samplers identified as SAUV-10H, SAU-11H, GMW-IP-10, GMW-IP-10-70, GMW-IP-10-801, or GMW-IP-10-8000, which include the components identified under RFPS-1287-063.

(3) RFPS-1287-065, "Sierra-Andersen or General Metal Works Model 321-C PM_{10} High-Volume Air Sampler System", consisting of a Sierra-Andersen or General Metal Works Model 321-C PM_{10} Size-Selective Inlet and any of the high-volume air samplers identified as SAUV-10H, SAUV-11H, GMW-IP-10, GMW-IP-10-70, GMW-IP-10-801, or GMW-IP-10-8000, which include the components identified under RFPS-1287-063.

These methods are available from the Sierra-Andersen Division of Andersen Samplers, Inc., 4215 Wendell Drive, Atlanta, Georgia 30336, or General Metal Works, Inc. (a wholly-owned subsidiary of Andersen Samplers, Inc.), 145 South Miami, Cleves, Ohio 45002. A notice of receipt of application for these

methods appeared in the Federal Register, Volume 52, September 25, 1987, page 36095.

Test samplers representative of these methods have been tested by the applicant, in accordance with the test procedures specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that the methods should be designated as reference methods. The information submitted by the applicant will be kept on file at the EPA Environmental Monitoring Systems Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA regulations implementing the Freedom of Information Act).

As designated reference methods, these methods are acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surviellance. For such purposes, the methods must be used in strict accordance with the operation or instruction manual associated with each method and subject to any limitations specified in the applicable designation (see description of the methods above). Vendor modifications of designated methods used for purposes of Part 58 are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of Appendix C to 40 CFR Part 58 (Modifications of Methods by Users).

In general, these reference method designations apply to any Sierra-Andersen (SA) or General Metal Works (GMW) PM_{10} high-volume air sampler system that is identical to any of the systems described in the above designations. Each of the three designated methods consists of any of six different high-volume air samplers and the specified PM_{10} size-selective inlet. The PM_{10} size-selective inlets associated with these newly-designated methods reflect an evolutionary design process on the part of the applicant. The SA or GMW Model 1200, the latest in a series of high-volume PM_{10} inlets developed and marketed by Andersen Samplers, Inc. and its subsidiary, is a single-stage impaction device that uses a greased impaction shim for collection of non-PM_{10} particles within the inlet. The inlet requires periodic maintenance (i.e., cleaning of the internal surfaces of the inlet and cleaning and reapplication of grease to the impaction shim) and has a hinged design to make these operations convenient for the operator.

The SA or GMW Model 321–B (a two-stage impaction device) and Model 321–C (a single-stage impaction device) are modified versions of two out-of-production inlets manufactured and sold by the applicant prior to the introduction of the Model 1200. The Model 321–B is an upgraded version of the SA or GMW Model 321–A inlet; the Model 321–C is an upgraded version of the SA or GMW Model inlet. In both cases, the modification consists of incorporation of (1) an impaction shim (similar to the one used in the Model 1200 inlet), and (2) a specially-designed set of acceleration nozzle inserts. (Note: In the Model 321–B, only the 1st impaction stage (upper stage) requires the shim.) The purpose of the acceleration nozzle inserts is to provide a 50 percent cutpoint that is about 0.5 μm lower than that of the original inlets, but still within the 10 ± 0.5 μm specification required by 40 CFR Part 53. Both of these approved inlets (Model 321–B and Model 321–C) will require periodic maintenance similar to that cited above for the Model 1200. However, neither of these inlets has the hinged design of the Model 1200; thus, they must be dismantled by the operator, to some extent, in order to perform the required maintenance.

Current owners of SA or GMW high-volume PM_{10} size-selective inlets and associated air samplers, purchased from Andersen Samplers, Inc. or General Metal Works, Inc., are advised to contact the manufacturer to determine the designation status of specific system configurations or the specific requirements of upgrading existing inlets or sampler systems to be covered under these new designations.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the PM_{10} sampler when it is delivered to the ultimate purchaser.

(2) The PM_{10} sampler must not generate any unreasonable hazard to operators or to the environment.

(3) The PM_{10} sampler must function within the limits of the performance specifications given in Table D–1 of Part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any PM_{10} sampler offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) An applicant who offers PM_{10} samplers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such samplers and to notify them within 30 days if a reference or equivalent method designation applicable to the sampler has been cancelled of if adjustment of the samplers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(6) An applicant who modifies a PM_{10} sampler previously designated as a reference or equivalent method is not permitted to sell the sampler (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the sampler (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Environmental Monitoring Systems Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these reference methods will provide assistance to the states in establishing and operating their air quality surveillance systems under Part 58. Additional information concerning this action may be obtained by writing to the address given above. Technical questions concerning the methods should be directed to the manufacturer.

Erich Bretthauer,

Acting Assistant Administrator for Research and Development (DAA/ORD)

[FR Doc. 87–27553 Filed 11–30–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities Under OMB Review

November 19, 1987.

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, (202) 632–7513.

OMB No.: 3060–0019

Title: Application for a Radio Station License or Modification Thereof Under Part 23 or 25
Form No.: FCC 403

The approval of FCC 403 has been extended through 07/31/90. The July 1985 edition with the previous OMB expiration date of 09/30/87 will remain in use until updated forms are available.

OMB No.: 3060–0128
Title: Application for Private Land Mobile and General Mobile Radio Services
Form No.: FCC 574

A revised application form FCC 574 has been approved for use through 09/30/90. The November 1986 edition with an OMB expiration date of 09/30/87 will remain in use until revised forms are available.

OMB No.: 3060–0129
Title: Supplemental Information for Trunked and Conventional Systems (806–821 MHz and 851–866 MHz Bands)
Form No.: FCC 574–A

The approval on FCC 574–A has been extended through 12/31/87. The June 1986 edition with the previous OMB expiration date of 09/30/87 will remain in use until implementation of the revised form FCC 574.

OMB No.: 3060–0130
Title: Private Fixed, Mobile, and Radiolocation Services Supplementary Information to FCC Form 574
Form No.: FCC 574–B

The approval on FCC 574–B has been extended through 09/30/90. The October 1982 edition with the previous OMB expiration date of 09/30/87 will remain in use until updated forms are available.

Federal Communications Commission
William J. Tricarico,
Secretary.
[FR Doc. 87–27515 Filed 11–30–87; 8:45 am]
BILLING CODE 6712–01–M

Loose-Leaf Version of Rules Available

November 23, 1987.

The Commission now has available, through the Government Printing Office's Superintendent of Documents, Volume I and Part 13 of its rules in loose-leaf form.

Volume I contains Part 0 (Commission Organization), Part 1 (Practice and Procedure), and Part 19 (Employee Responsibilities and Conduct). Part 13 contains rules applicable to Commercial Radio Operators. Both publications include all amendments through August 31, 1987.

To order, call the Government Printing Office, Superintendent of Documents, Tel. (202) 783–3238. The stock numbers and prices are as shown below.

Publication	Stock No.	Price
Volume I	004–000–00460–4	$9.00
Part 13	004–000–00458–2	$1.00

Other Volumes and individual pamphlets will soon be available and announced in a future public notice.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–27513 Filed 11–30–87; 8:45 am]
BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Anchor Broadcasting LTD. Partnership et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Anchor Broadcasting Limited Partnership, Selbyville, DE.	BPH–860917MD	87–504
B. Selbyville Broadcasting Co., Inc., Selbyville, DE.	BPH–860918MB	
C. Satellite Systems Engineering, Inc., Selbyville, DE.	BPH–860918MK	
D. Selbyville Broadcasting, Ltd., Selbyville, DE.	BPH–860918MW	
E. Selbyville Broadcasting Group, A Limited Partnership, Selbyville, DE.	BPH–860918NH	
F. Galaxy Communications, Inc., Selbyville, DE.	BPH–860918NY	
G. Benjamin Macwan, Selbyville, DE.	BPH–860918OD	
H. Greater Selbyville Media, Selbyville, DE.	BPH–860918OH	
I. Kirkley Paige Beal, Selbyville, DE.	BPH–860918OQ	
Susan M. Bechtel, Selbyville, DE.	BPH–860918OV	
K. Selbyville Broadcasting, Selbyville, DE.	BPH–860916ME	Dismissed

2. Pursuant to 47 U.S.C. § 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR. 19,347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading and applicants

1. Alien Control.
E
2. Comparative.
A–J
3. Ultimate.
A–J

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,
Assistant Chief Audio Services Division Mass Media Bureau.
[FR Doc. 87–27505 Filed 11–30–87; 8:45 am]
BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Mrs. Betty Bennett, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Mrs. Betty Bennett, Ferndale, CA.	BPH–850711MF	87–513
B. M. Keith Allgood, Ferndale, CA.	BPH–850711M2	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue heading, applicant

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription

Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–27506 Filed 11–30–87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Cochran-Smith Broadcasting Ltd., Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Cochran-Smith Broadcasting, Inc., Mt. Vernon, KY.	BPH–860703MD	87–497
B. William S. Daugherty, III, Mt. Vernon, KY.	BPH–860703MF	
C. George L. Hunt and Pauline C. Hunt, d/b/a Rockcastle Broadcasting, Mt. Vernon, KY.	BPH–8607070H	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading, Applicant(s)

1. Air Hazard, C
2. Comparative, A, B, C
3. Ultimate, A, B, C

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Steet, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–27507 Filed 11–30–87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Proceeding; George W. Draper, Jr., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. George W. Draper, Jr., Gaston, NC.	BPH–860917MI	87–514
B. Keith A. Smith, Gaston, NC.	BPH–860918NU	
C. M&S Broadcasting, Gaston, NC.	BPH–860918NV	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applicants have been designated for a hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicants

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in the Appendix to this notice. A copy of the complete HDO in this proceeding is available in the FCC Dockets branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–27508 Filed 11–30–87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Susan B. Klaus et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Susan B. Klaus, Edinboro, PA.	BPH–860918MF	87–511
B. Paolella-Csop Company, Edinboro, PA.	BPH–860918MY	
C. ADM Communications, A Limited Partnership, Edinboro, PA.	BPH–860918NB	
D. Jeanine M. Joynt, Edinboro, PA.	BPH–860918NJ	
E. H.A.M. Broadcasting Co., Edinboro, PA.	BPH–860918NP	
F. J. R. McClure d/b/a Edinboro Media Company, Edinboro, PA.	BPH–860918NQ	
G. Jeremy Warren and Cole Hughley, General Partners, Edinboro, PA.	BPH–860918OS	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The test of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicants

1. Cross-interest, B
2. Comparative, A–G
3. Ultimate, A–G

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appeidix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M NW., Washington DC. 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–27509 Filed 11–30–87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Nashua Educational Broadcasting Foundation, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Nashua Educational Broadcasting Foundation, Nashua, NH.	BPED–831104AC	87–515

Applicant, city and State	File No.	MM Docket No.
B. Family Stations, Inc., Nashua, NH.	BPED-840430IJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicants

1. Comparative-Noncommercial Educational FM, A,B
2. Ultimate, A,B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–27510 Filed 11–30–87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Proceeding; Twin City Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Twin City Broadcasting, Inc., Sault Ste. Marie, MI.	BPH-850712XU	87-498
B. Central Michigan University, Sault Ste. Marie, MI.	BPH-850712XX	
C. Stone Communications, Inc., Sault Ste. Marie, MI.	BPH-850712XV (Dismissed)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applicants have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–27511 Filed 11–30–87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC–688; FHLBB No. 2932]

First Federal Saving & Loan Association of Griffin; Griffin GA; Final Action; Approval of Conversion Application

November 25, 1987.

Notice is hereby given that on November 12, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Griffin, Griffin, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87– 27558 Filed 11–30–87; 8:45 am]

BILLING CODE 6720-01-M

Vernon Savings & Loan Association, FSA; Dallas, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Vernon Savings and Loan Association, FSA, Dallas, Texas on November 19, 1987.

Dated: November 25, 1987.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87–27557 Filed 11–30–87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreements No.:

202–010270–023
202–010656–023

Titles:

(1) Gulf-European Freight Association Agreement
(2) North Europe-U.S. Gulf Freight Association Agreement

Parties (1) & (2):

Compagnie Generale Maritime (CGM)
Lykes Bros. Steamship Co., Inc.
Gulf Container Lines (GCL), B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
P & OCL (Trans Freight Lines) Limited
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendments would add a stipulation that the authority of the parties to engage in inland European transportation of cargo

includes authority to agree upon prices to be paid to European inland carriers.

Agreements No.:

(1) 202–010270–022
(2) 202–010656–022

Titles:

(1) Gulf-European Freight Association Agreement
(2) North Europe-U.S. Gulf Freight Association Agreement

Parties (1) & (2):

Compagnie Generale Maritime (CGM)
Lykes Bros. Steamship Co., Inc.
Gulf Container Line (GCL), B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
P & OCL (Trans Freight Lines) Limited
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendments would clarify the authority and practices of the agreements concerning the payment of freight forwarder compensation and would enlarge the record retention provisions of activities under the agreements.

Agreement No.: 226–010916–001.
Title: Global Equipment Management Agreement.

Parties:

The East Asiatic Co. Ltd. A/S
Johnson Line AB
Rederiaktiebolaget TransatlanticWilh. Wilhelmsen Limited A/S
Barber Blue Sea
EAC-PNSL Service Ltd.
EAC Lines Trans Pacific Service Ltd.
Johnson Scanstar
Pacific Australia Direct Line
Rederiaktiebolaget Transocean

Synopsis: The proposed amendment would admit Johnson South America Lines AB, Rosa Line joint service and Streamline joint service as parties to the agreement. The parties have requested a shortened review period.

Agreement No.: 203–010973–001.
Title: Trans Freight Lines/Nedlloyd Agreement.

Parties:

Trans Freight Lines
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would provide that either party may participate in any agreement effective under the Shipping Act of 1984 which permits ocean common carriers in the trade to charter space from one another under circumstances of force majeure. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: November 25, 1987.

Joseph C. Polking,

Secretary.

Dated: November 25, 1987.

[FR Doc. 87–27545 Filed 11–30–87; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following has been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Signet Cruise Line A/S, 55 Francisco Street, San Francisco, California 94133.

Date: November 25, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–27546 Filed 11–25–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

November 24, 1987.

Background

Notice is hereby given of an amendment to proposed information collection(s) submitted to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). Notice of the proposed revisions to the information collection(s) was published in the **Federal Register** of November 6, 1987. A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202–395–7340).

Request for OMB Approval to Revise the Following Report

Report title: Reports of Condition and Income.

Agency form number: FFIEC 031–034.
OMB Docket number: 7100–0036.
Frequency: Quarterly.
Reporters: State member banks.
Annual reporting hours: 149,178.
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 324) and is given partial confidential treatment.

State member banks are required to file detailed schedules of assets, liabilities, and capital accounts in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes.

This amendment gives notice of change in effective date for implementation of a revised format for Schedules RI–E of all reports, in which nine specific questions are to be substituted for the current free-form questions, to permit electronic entry. The date for implementation of this revision is to be as of the December 1987 reports, instead of the March 1988 report date as originally proposed. The other revisions described in the **Federal Register** notice of November 6, and revisions covered by the **Federal Register** notice of August 11, 1987, are to be implemented as originally proposed.

Board of Governors of the Federal Reserve System, November 24, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–27479 Filed 11–30–87; 8:45 am]

BILLING CODE 6210–01–M

Bank of New York Co., Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies, and Acquisitions of Nonbanking Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87–23787) published at page 38273 of the issue for Thursday, October 15, 1987.

Under the Federal Reserve Bank of New York, the entry for Bank of New York Company, Inc. is revised to read as follows:

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.*, New York, New York; to acquire 100 percent of the voting shares of Irving Bank Corporation, New York, New York, and thereby indirectly acquire Irving Trust Company, New York, New York; The Bank of Lake Placid, Lake Placid, New York; Bank of Long Island, Babylon, New York; Central Trust Company, Rochester, New York; Dutchess Bank and Trust Company, Poughkeepsie, New York; Endicott Trust Company, Endicott, New York; The First National Bank of Hancock, Hancock, New York; The First National Bank of Moravia, Moravia, New York; The Fulton County National Bank & Trust Company, Gloversville, New York; The Hayes National Bank, Clinton, New York; The Merchants National Bank & Trust Company of Syracuse, Syracuse, New York; Nanuet National Bank, Nanuet, New York; Union National Bank, Albany, New York; and Scarsdale National Bank and Trust Company, Scarsdale, New York.

In connection with this application, Applicant has also applied to acquire Irving Business Center, Inc., New York, New York, and thereby engage in the business of marketing the products and services of Irving Trust Company pursuant to § 225.25(b)(1) and (5); Irving Financial Centers, Inc., New York, New York, and thereby engage in consumer lending and commercial lending to local business pursuant to § 225.25(b)(1); Irving Life Insurance Company, New York, New York, and thereby engage in providing credit-related life, mortgage and health insurance pursuant to § 225.25(b)(8); Irving Trust Company California, San Francisco, California; and thereby engage in providing fiduciary, custody and investment management services pursuant to § 225.25(b)(3); Irving Trust Company Florida, Miami, Florida; and thereby engage in providing fiduciary, custody and investment management services pursuant to § 225.25(b)(3); One Wall Street Brokerage, Inc., New York, New York, and thereby engage in securities brokerage activities pursuant to § 225.25(b)(15); Briggs, Schaedle Futures Inc., New York, and thereby engage in futures commission merchant for nonaffiliated persons in the execution and clearance of futures contracts and options on futures contracts pursuant to § 225.25(b)(18); Liberty Brokerage, Inc., New York, New York, and thereby engage as interdealer broker of U.S. Government Securities pursuant to § 225.25(b)(15); Irving Services Corporation, New York, New York, and thereby engage in servicing loans primarily related to credit card purchases and providing data processing services to others pursuant to § 225.25(b)(1) and (b)(7); and Irving Leasing Corporation, New York, New York, and its twelve subsidiaries, and thereby engage in leasing personal or real property or acting as agent, broker or adviser in leasing such property pursuant to § 225.25(b)(5); and Irving Securities, Inc., New York, New York, and thereby engage in securities trading activities, including acting as a primary dealer in U.S. Government securities pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Comments on this application must be received by December 4, 1987.

Board of Governors of the Federal Reserve System, November 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27477 Filed 11-30-87; 8:45 am]

BILLING CODE 6210-01-M

Barnett Banks, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Barnett Banks, Inc.*, Jacksonville, Florida; to engage *de novo* through its subsidiary, Verifications, Inc., Jacksonville, Florida, in acting as a merchant processor for Visa and MasterCard accounts pursuant to § 225.25(a)(1) of the Board's Regulation Y.

2. *Deposit Guaranty Corp.*, Jackson, Mississippi; to engage *de novo* through its subsidiary, G & W Life Insurance Company, Jackson, Mississippi, in providing credit insurance related to extensions of credit by Applicant and any or its subsidiaries and affiliates to ensure the repayment of outstanding balances due on any such extension of credit in the event of death, disability, or involuntary unemployment of debtor pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the State of Mississippi and the Southeast.

Board of Governors of the Federal Reserve System, November 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27481 Filed 11-30-87; 8:45 am]

BILLING CODE 6210-01-M

First Eastern Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 18, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Eastern Corporation*, Wilkes-Barre, Pennsylvania; to acquire Dolphin and Bradbury, Inc., Philadelphia, Pennsylvania, and thereby engage in underwriting and dealing in government obligations and Money Market instruments pursuant to § 225.25(b)(16) of the Board's Regulation Y. These activities will be conducted in the Commonwealth of Pennsylvania.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon; to acquire Sheppard Financial Services, Inc., Seattle, Washington, and thereby engage in acting as an investment advisor and providing portfolio investment advice pursuant to §§ 225.25(b)(4) (ii) and (iii) of the Board's Regulation Y. Comments on this application must be received by December 14, 1987.

Board of Governors of the Federal Reserve System, November 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27482 Filed 11-30-87; 8:45 am]

BILLING CODE 6210-01-M

First National of Nebraska, Inc.; Acquisition of Company engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 255.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, descreased in unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of facts that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National of Nebraska, Inc.*, Omaha, Nebraska; to acquire Data Management Products, Inc., Omaha, Nebraska, and thereby engage in providing to others data processing and data transmisison services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27485 Filed 11-30-87; 8:45 am]

BILLING CODE 6210-01-M

First Union Corp., et al.; Formations of; Acquisitions by; and Mergers of Ban Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 18, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to acquire 100 percent of the voting shares of Florida Commercial Banks, Inc., Miami, Florida, and thereby indirectly acquire Commercial Bank & Trust Company, Miami, Florida; Merchants Bank of Miami, Miami, Florida; Commercial Bank of Kendall, Miami, Florida; Bank of Palm Beach and Trust Company, Palm Beach, Florida; and the First State Bank of Lantana, Lantana, Florida. Comments on this application must be received by December 23, 1987.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104

Marietta Street NW., Atlanta, Georgia 30303:

1. *CB&T Bancshares, Inc.*, Columbus, Georgia; to acquire 100 percent of the voting shares of Northwest Florida Banking Corporation, Quincy, Florida, and thereby indirectly acquire The Quincy State Bank, Quincy, Florida, and the Tallahassee State Bank, Tallahassee, Florida.

2. *First Alabama Bancshares, Inc., Montgomery, Alabama, and Golden* Summit Corporation, Milton, Florida; to acquire 100 percent of the voting shares of Sunshine Bankshares Corporation, Fort Walton Beach, Florida, and thereby indirectly acquire Sunshine Bank of Fort Walton Beach, Fort Walton Beach, Florida.

Board of Governors of the Federal Reserve System, November 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27483 Filed 11-30-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 18179(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 14, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Edward J. Geoghegan*, Clearwater, Florida; to acquire 15.8 percent of the voting shares of Florida BanCorporation, Inc., Clearwater, Florida, and thereby indirectly acquire Florida Bank of Commerce, Clearwater, Florida.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Union Bank & Trust Co./Northwest Capital Management*, Helena, Montana; Oscar Svendsen, Froid, Montana; Kent Douglas, Livingston, Montana; in their capacities as trustees for the benefit of Helen Hornby, Froid, Montana, to acquire an additional 6.1 percent of the voting shares of Northwestern Wyoming Bank Corporation, Newcastle, Wyoming, and thereby indirectly acquire First State Bank of Newcastle, Newcastle, Wyoming.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *David F. Stein*, Laguna Beach, California; to acquire 18.54 percent of the voting shares of PNB Financial Group, Newport Beach, California, and thereby indirectly acquire Pacific National Bank, Newport Beach, California.

Board of Governors of the Federal Reserve System, November 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27484 Filed 11-30-87; 8:45 am]

BILLING CODE 6210-01-M

Keycorp, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *KeyCorp*, Albany, New York; to engage *de novo* through its subsidiary, Key Trust Company of the Northwest, Seattle, Washington, in performing functions or activities that may be performed by a trust company pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be performed in the states of Washington and Oregon. Comments on this application must be received by December 14, 1987.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Franklin Financial Services Corporation*, Chambersburg, Pennsylvania; to engage *de novo* through its subsidiary, Franklin Founders Life Insurance Company, Phoenix, Arizona, in the reinsurance of credit insurance in connection with loans secured by first mortgages, including both life and disability insurance. This activity will be conducted in South Central Pennsylvania.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *PBM Bancorp, Inc.*, Marion, Illinois; to engage *de novo* in performing data processing services for a non-subsidiary bank pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of Illinois.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Menomonie Financial Services, Inc.*, Menomonie, Wisconsin; to engage *de novo* through its subsidiary, Electronic Strategies, Inc., Menomonie, Wisconsin, in providing data processing and data transmission services pursuant to § 225.25(b)(7); and providing management consulting advice to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation

Y. These activities will be conducted in West Central Wisconsin.

Board of Governors of the Federal Reserve System, November 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27486 Filed 11-30-87; 8:45 am]

BILLING CODE 6210-01-M

New Hampshire Savings Banks Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 18, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *New Hampshire Savings Bank Corp.*, Concord, New Hampshire; to acquire 100 percent of the voting shares of New Hampshire Savings Bank of Nashua, Nashua, New Hampshire, the successor by merger of NHSB/Nashua and First Federal Bank, FSB, Nashua, New Hampshire.

2. *Portsmouth Bank Shares, Inc.*, Portsmouth, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of Portsmouth Savings Bank, Portsmouth, New Hampshire, and 7.64 percent of the voting shares of First Coastal Banks, Inc., Portsmouth, New Hampshire, and thereby indirectly acquire The First National Bank of Portsmouth, Portsmouth, New Hamsphire, and Merchants National Bank of Portsmouth, Dover, New Hampshire.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Community National Bancorp, Inc.*, Staten Island, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank and Trust Company of New York, Staten Island, New York.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Pocahontas Bankshares Corporation*, Bluefield, West Virginia; to acquire 91.5 percent of the voting shares of The Bank of Oceana, Oceana, West Virginia.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Lincoln County Bancorp, Inc.*, Troy, Missouri; to acquire 100 percent of the voting shares of Commerce Bank of Louisiana, N.A., Louisiana, Missiouri. Comments on this application must be received by December 14, 1987.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble; Vice President) 400 South Akard Street, Dallas Texas 75222:

1. *First Delhi Corporation*, Delhi, Texas; to acquire 51 percent of the voting shares of Security Bancshares Incorporated, Monroe, Louisiana, and thereby indirectly acquire Security Bank, Monroe Louisiana.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Baldi Bros. Construction Co. Retirement Trust*, Beaumont, California; to become a bank holding company by acquiring 100 percent of the voting shares of Gateway Western Bank, Beaumont, California.

Board of Governors of the Federal Reserve System, November 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-21487 Filed 11-30-87; 8:45 am]

BILLING CODE 6210-01-M

Pacific Bank, National Association; Corporation To do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation") The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Boards: Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for that notice. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than December 14, 1987.

A. **Board of Governor of the Federal Reserve System** (William W. Wiles, Secretary) Washington, DC 20551:

1. *The Pacific Bank, National Association*, San Francisco, California; to establish a corporation to be known as The Pacific International Bank. This application may be inspected at the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, November 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27488 Filed 11-30-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of, Acquisitions by, and Mergers Bank Holding Companies of and Acquisitions of Nonbanking Companies; Banc One Corp., et al.; Correction to Sunwest Financial Services, Inc.

This notice corrects a previous Federal Register notice (FR Doc. 87-26661) published at page 44483 of the issue for Thursday, November 19, 1987.

Under the Federal Reserve Bank of Kansas City, the entry for Sunwest Financial Services, Inc. is revised to read as follows:

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoeing, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Sunwest Financial Services, Inc.*, Albuquerque, New Mexico; to acquire through its wholly owned subsidiaries, Sunwest Acquisition Corp., Albuquerque, New Mexico and Sunwest Merger Corp., Albuquerque, New Mexico, the voting shares of American Southwest Bancshares, Inc., El Paso, Texas, and thereby indirectly acquire American Bank of Commerce, El Paso, Texas, and American Bank of

Commerce-East, El Paso, Texas. In addition, Sunwest Acquisition Corp. and Sunwest Merger Corp. have applied to become bank holding companies.

In connection with this application, Applicant has also applied to expand its current credit related insurance agency and reinsurance activity to cover extensions of credit by the proposed Texas subsidiary banks.

Comments on this application must be received by December 9, 1987.

Board of Governors of the Federal Reserve System, November 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27480 Filed 11-30-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87P-0151/CP]

Petition Requesting FDA To Set Up Pilot Program Substituting Drug Substance Applications for Drug Master Files

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the filing of a petition that requests that the agency set up a pilot program permitting the separate review and approval of drug substance applications. The pilot program, which would be administered by the Division of Generic Drugs in the Center for Drug Evaluation and Research, would permit drug substance applications for six drug substances and allow abbreviated new drug application applicants to incorporate-by-reference the data and information in a drug substance application to their applications. In addition, the petition requests that the pilot program, if it is successful, be expanded to include all drug substances likely to be part of an abbreviated new drug application.

DATE: Comments by February 29, 1988.

ADDRESS: Requests for a copy of the petition and written comments regarding the petition to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard L. Arkin, Center for Drug Evaluation and Research (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: A petition dated April 23, 1987, (Docket No. 87P-0151/CP) has been filed with the agency on behalf of the Generic Pharmaceutical Industry Association requesting the agency to establish and administer a pilot program that would permit the filing, in lieu of drug master files, of drug substance applications. Drug substance applications would contain data and information about certain drug substances and would be reviewed independently from abbreviated new drug applications. Under this program, drug substance could be approved for use in the manufacture of a drug product under a drug substance application and subsequently referenced in an abbreviated new drug application.

The petitioner further requests that, following the completion of the pilot program and a determination that the results of the program so warrant, the program of independent review and approval of drug substance applications be expanded to include most or all drug substances for which abbreviated new drug applications are filed or may be reasonably expected to be filed. The drug substances that the petition requests be included in the pilot program are hydrochlorothiazide and thioridazine, methyldopa, furosemide, piroxicam, and atenolol.

The petition asserts that the requested actions would bring about increased speed, certainty, and efficiency in the processing of applications.

The petition asserts that the agency's authority for this pilot program is within the discretion of the Commissioner of Food and Drugs under 21 CFR 314.420.

FDA is currently examining the merits of this petition and is, by this notice, giving anyone who may be affected by this petition or is otherwise interested in the outcome, an opportunity to comment.

Interested persons may, on or before February 29, 1988, submit written comments on the petition to the Dockets Management Branch (address above). These comments will be considered in preparing an agency response to the petition. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the petition should be sent to the Dockets Management Branch.

Dated: November 23, 1987

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-27976 Filed 11-30-87; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Dental Research; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on December 8-10, 1987, in Conference Room 117, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9:30 a.m. to recess on December 8 and from 9 a.m. to 1 p.m. on December 9, to discuss program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 1 p.m. to recess on December 9 and from 9 a.m. to adjournment on December 10 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Director of Intramural Research, NIDR, NIH, Building 30, Room 132, Bethesda, MD 20892 (telephone 301-496-1483) will provide a summary of the meeting, roster of committee members and substantive program information.

Dated: November 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-27664 Filed 11-30-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Designation of Klamath River Basin Conservation Area

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: As directed by the Klamath River Basin Fishery Resources

Restoration Act and as authorized by the Secretary of the Interior, the Director, U.S. Fish and Wildlife Service, designates all of the anadromous fish habitats and resources of the Klamath River Basin as the Klamath River Basin Conservation Area.

EFFECTIVE DATE: December 31, 1987.

ADDRESSES: The complete file related to this designation is available for inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Klamath Field Office, 1312 Fairlane Road, Yreka, CA 96097.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, Klamath Field Office at the above address; telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: Section 2(a) of the Klamath River Basin Fishery Resources Restoration Act (Pub. L. 99-552, approved October 27, 1986; 16 U.S.C. 460ss-460ss-6) directs the Secretary of the Interior to " . . . designate the anadromous fish habitat and resources of the Klamath River Basin as the Klamath River Basin Conservation Area". The Area so designated establishes the geographic scope of the Klamath River Basin Conservation Area Restoration Program to be developed and implemented by the Secretary in accordance with section 2(b) of the Act. In addition, the Area defines the anadromous fish populations that will be the focus of the fishery management plan and policy and recommendations of the Klamath Fishery Management Council as authorized by section 3(b) of the Act.

A notice of intent to designate the Klamath River Basin Conservation Area quoting the definition from section 2(a) of the Act was published in the **Federal Register** on March 25, 1987 (52 FR 9550). All interested parties were requested to submit comments by May 11, 1987, for consideration in determining the geographic area to be designated as the Klamath River Basin Conservation Area. In addition, the proposed designation was discussed during meetings of the Klamath Fishery Management Council on July 22, 1987, and the Klamath River Basin Fisheries Task Force on July 23, 1987. No comments have been received on this proposal.

Accordingly, all of the anadromous fish habitats and resources of the Klamath River Basin are designated as the Klamath River Basin Conservation Area.

Dated: November 23, 1987.

Steve Robinson,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 87-27560 Filed 11-30-87; 8:45 am]

BILLING CODE 4301-55-M

Bureau of Indian Affairs

Partition Agreement Between Cherokee Nation of Oklahoma and Kaw, Otoe-Missouria, Pawnee, Ponca and Tonkawa Indian Tribes of Oklahoma

November 17, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction of notice.

SUMMARY: In 52 FR 26747 for Thursday, July 16, 1987, the following corrections are hereby made: Appearing on page 26747, column two, the legal description is corrected in the tenth line by deleting "Sec. 16, Lots 1 and 2; S½NW¼; SE¼—" and inserting in lieu thereof "Sec. 16, Lots 1 and 2; S½NE¼; SE¼—". On page 26748, column one, the land description is corrected in the eighth line by deleting "Sec. 26, E½, Lot 2; E½NW¼S E¼;NW¼ and inserting in lieu thereof "Sec. 26, E½ Lot 2; E½NW¼SE¼; NW¼".

Hazel E. Elbert,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 87-27586 Filed 11-30-87; 8:45 am]

BILLING CODE 4310-02-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 21, 1987. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evalaution may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 16, 1987.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Montgomery County

Montgomery vicinity, *Building 800—Austin Hall*, Second St., Maxwell AFB

Montgomery vicinity, *Building 836—Community College of the Air Force Building*, Maxwell Blvd., Maxwell AFB

Montgomery vicinity, *Maxwell Air Force Base Senior Officer's Quarters Historic District*, West Dr., N. Juniper & S. Juniper Sts., Inner Circle, Center Dr., Sequoia, & East Dr., Maxwell AFB

COLORADO

Montezuma County

Mancos, *Mancos Opera House*, 136 W. Grand Ave.

FLORIDA

Alachua County

Newberry, *Newberry Historic District*, Roughly bounded by NW Second Ave., NW Second St., SW Second St., Lucile St., & NW Ninth St.

Collier County

Naples, *Naples Historic District*, Roughly bounded by Ninth Ave. St, Third St., Thirteenth Ave. S. & Gulf of Mexico

Leon County

Tallahassee, *Bevard, Caroline, Grammar School*, 727 S. Calhoun St.

IDAHO

Idaho County

Riggins vicinity, *Bemis, Polly, House*, Accessible on Salmon River via boat

MARYLAND

Baltimore County

Catonsville, *St. Charles College Historic District*, Shelden, Lake, & Montezuma Aves.

Lapeer County

Dryden vicinity, *Day, John W., House*, 4985 Dryden Rd.

MINNESOTA

Jackson County

Jackson, *Jackson Commerical Historic District*, Second St. between Sheridan & White Sts.

St. Louis County

Archological Site 21SL141
Archological Site 21SL35

NEW YORK

Albany County

Albany, *Buildings at 744, 746, 748, 750 Broadway*, 744—750 Broadway

UTAH

Weber County

Orgen, *Arvondor Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 823 Twenty-third St.

Orgen, *Avelan Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 449 Twenty-seventh St.

Ogden, *Avon Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 961 Twenty-fifth St.

Ogden, *Barnhart Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 861 Twenty-seventh St.

Ogden, *Downing Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 357—359 Twenty-seventh St.
Ogden, *Fairview Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 579—587 Twenty-seventh St.
Ogden, *Farnsworth Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 2539 Jefferson Ave.
Ogden, *Fern-Marylyn Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 2579 Adams Ave.
Ogden, *Flowers Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 2681 Madison Ave.
Ogden, *Fontenelle Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 2465—2475 Monroe Ave.
Ogden, *Geffas Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 2675 Grant Ave.
Ogden, *Helms Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 2248—2250 Jefferson Ave.
Ogden, *Hillcrest Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 2485 Monroe Ave.
Ogden, *La Frantz Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 461 Twenty-sixth St.
Ogden, *Ladywood Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 670—690 Twenty-sixth St.
Ogden, *Mc Gregor Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 802—810 Twenty-fifth St.
Ogden, *Peery Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 2461 Adams Ave.
Ogden, *Rose Apartments (Three-Story Apartment Buildings in Ogden, 1908–1928 MPS)*, 302—308 Twenty-seventh St.
Ogden, *Upton Apartments (Three-Story Apartment Building in Ogden, 1908—1928 MPS*, 2300—2314 Jefferson Ave.

[FR Doc. 87–27344 Filed 11–30–87; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31088]

Southern Railway Co. and Norfolk Southern Corp.; Purchase; Illinois Central Gulf Railroad Co. Line; Between Fulton, KY and Haleyville, AL

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application filed October 30, 1987, by Southern Railroad Company to acquire Illinois Central Gulf Railroad Company's 199-mile line of railroad between Fulton, KY and Haleyville, AL, and 154 miles of trackage rights over the ICG between Fulton, KY and Centralia, IL.

DATE: Written comments must be filed with the Interstate Commerce Commission no later than December 28, 1987. Responsive applications must be filed no later than January 11, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H.. Dettmar, (202) 275–7245 Paul Nishimoto, (202) 275–7888 [TDD for hearing impaired (202) 275–1721].

ADDRESSES: Unless otherwise indicated, an original and 20 copies of all documents should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding should be sent to:

(1) Rail Section, Interstate Commerce Commission, Washington, DC 20423
(2) Applicants' representatives: Robert J. Cooney, One Commercial Place, Norfolk, VA 23510
William C. Sippel, Oppenheimer, Wolff & Donnelly, 233 N. Michigan Avenue, Two Illinois Center—Suite 2306, Chicago, IL 60601.

SUPPLEMENTARY INFORMATION: The application and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, DC.

Any interested person may participate in this proceeding by submitting written comments regarding the application. Comments must be filed no later than December 28, 1987. An original and 20 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423. Written comments shall be concurrently served by first class mail on the United States Secretary of Transportation and the Attorney General of the United States.

Written comments must also be served upon all parties of record within 10 days after the service list is issued by the Commission. We plan to issue the service list by January 11, 1988. Any person who files timely written comments shall be considered a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed. Comments must contain the information specified at 49 CFR 1180.4(d)(1)(iii).

Additionally, comments filed by railroads must contain a statement on whether the commenting railroad intends to file inconsistent applications, petitions for inclusion, trackage rights, or any other affirmative relief requiring an application to be filed with the Commission. This will be considered a prefiling notice without which the commission will not entertain applications for this type of relief.

Preliminary comments from the Secretary of Transportation and Attorney General must be filed by January 11, 1988.

Parties seeking to modify any of their requested protective conditions specified in their initial comments must file a second list of protective conditions no later than January 11, 1988. Parties shall not be permitted to seek any protective conditions other than those requested in either their first or second list of protective conditions.

Parties filing responsive applications must do so no later than January 11, 1988. Responsive applications include inconsistent applications, petitions for inclusion, and any other affirmative relief that requires an application to be filed with the Commission (including trackage rights; purchase, acquisition, construction, or operation of a railroad line; pooling or terminal operations; or abandonment of a railroad line). Any responsive applications that are not major are presumed to be significant. Responsive applications must include all supporting evidence in the form of verified statements.

All evidence in opposition to the primary application including verified statements, is due January 11, 1988. Opposition evidence shall be served on all parties of record and shall be filed (with 20 copies) with the Commission.

Primary and responsive applicants and other parties supporting applicants may file evidence in rebuttal to any opposition evidence (including opposing evidence submitted by interveners). Rebuttal evidence shall be due January 26, 1988, and must be served on all parties of record and filed (with 20 copies) with the Commission.

Any impact analysis, traffic studies, and data submitted shall relate to the calendar year 1986. These data may be supplemented with more recent data where available and relevant.

Parties should contact Paul Nishimoto, (202) 275–7888 to obtain docket numbers for any responsive applications. Petitions for waiver, clarification, or leave to file an incomplete application shall be filed no later than December 11, 1987. Each responsive application filed and accepted will be consolidated with the primary application in this proceeding.

Additional information is contained in the Commission's decision (Decision No. 3). To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: November 23, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-27438 Filed 11-30-87; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services; Conservation Project Support Program

AGENCY: Institute of Museum Services, NFAH.

ACTION: Grant Application availability notice for Fiscal Year 1988.

This grant application announcement applies only to the Conservation Project Support program awards under 45 CFR Part 1180 for Fiscal Year 1988.

Nature of Program: IMS makes awards under the CP program to museums to assist with the conservation of museum collections. The purpose of these awards is to ease the financial burden borne by museums as a result of their increased use by the public and to help them carry out their educational role, as well as other functions. Section 206 of the Museum Services Act, Title II of Pub. L. 94-462, as amended, contains authority for this program. (20 U.S.C. 965)

Deadline Date For Transmittal of Applications: An application for a new grant must be mailed or hand-delivered by Friday, January 22, 1988.

Applications Delivered by Mail: An application sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-cancelled by the U.S. Postal Service.

Applications Delivered By Hand: An application that is hand-delivered must be taken to the Institute of Museum Services, Old Post Office Building, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506.

IMS will accept a hand-delivered application between 9:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

Program Information: Program information is contained in the following: final regulations published June 17, 1983 in **Federal Register** Vol. 48, no. 118, pages 27727-27734; amendments published on April 10, 1984 **Federal Register** Vol. 49, no. 70, pages 14108-14111 and on June 15, 1984 **Federal Register** Vol. 49, no. 117, pages 24731-24733; notice of proposed rulemaking published on October 5, 1984 **Federal Register** Vol. 49, No. 195, pages 39346-39349; final guidelines and standards published July 5, 1985 in **Federal Register** Vol. 50, no. 129, pages 27584-27589; the Application forms and accompanying instructions in the Application Packet. See paragraph on Application form.

Available Funds: Approximately $3,500,000 pending Congressional appropriation. IMS normally, makes conservation grants of no more than $25,000 in Federal funds. Unless otherwise provided by law, if the Director determines that exceptional circumstances warrant, the Director, with the advice of the Board, may award a conservation grant which obligates in excess of $25,000 in Federal funds. The Director may make such a determination with respect to a category of conservation grants by notice published in the **Federal Register.** IMS awards conservation grants only on a matching basis. This means that at least 50% of the costs of a conservation project must be met with non-federal funds. (See 45 CFR 1180.16(b)).

Application Forms: IMS is mailing application forms and program information in a CP Application Packet to museums and other institutions on its mailing list. Applicants may obtain Application Packets by writing or telephoning the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506, (202/786-0539).

Applicable Regulations: Final regulations for the Conservation Project Support grant program were published in the **Federal Register** on June 17, 1983, FR Vol. 48, No. 118, pages 27727-27734. Amendments to these regulations were published in the **Federal Register** on July 5, 1985, 50 FR 27585-27588, and on December 2, 1986, FR Vol. 51, No. 231, pp. 43351-43354.

The regulations as amended implement the Museum Services Act. The amendments make technical and other changes in the eligibility conditions and other terms for the administration of the Conservation Project Support Program and remove unneeded provisions. As revised the regulations published on June 17, 1983 will apply to the award of grants for Fiscal Year 1988.

Further Information: For further information contact Theresa Michel, Public Affairs Officer, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, Telephone: (202) 786-0536.

Dated: November 25, 1987.

(Catalogue of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Lois Burke Shepard,

Director, Institute of Museum Services.

[FR Doc. 87-27576 Filed 11-30-87; 8:45 am]

BILLING CODE 7036-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of section 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 3-5, 1987, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on November 18, 1987.

Thursday, December 3, 1987

8:45 a.m.-9:45 a.m.: Seismic Qualification of Equipment (Open)—Briefing and discussion of proposed Final NRC Regulatory Guide 1.100, Rev. 2 on Seismic Qualification of Electric and Mechanical Equipment for Nuclear Power Plants.

10:00 a.m.-11:30 a.m.: Quantitative Safety Goals (Open)—Review of proposed implementation plan for NRC Quantitative Safety Goals.

11:30 a.m.-12:00 Noon: ACRS Activities (Open/Closed)—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee including the internal allocation of ACRS resources to provide advice on the regulation and disposal of nuclear radioactive waste.

Portions of this session will be closed to discuss information that involves the internal personnel rules and practices of

the agency and information the release of which would represent an unwarranted invasion of personal privacy.

1:00 p.m.-2:00 p.m.: NRC Research Program (Open/Closed)—Meeting with Director, NRC Office of Nuclear Regulatory Research to discuss items of mutual interest.

Portions of this session will be closed to discuss information the premature release of which is likely to frustrate the NRC's ability to implement affected programs.

2:00 p.m.-3:30 p.m.: Human Factors (Open)—Review of proposed NRC policy regarding Operator License Fundamentals Examination.

3:45 p.m.-5:30 p.m.: ACRS Function (Open)—Discuss the scope and nature of ACRS activities in its advisory role.

5:30 p.m.-6:30 p.m.: Integrated Safety Assessment Program (Open)—Discuss proposed ACRS action/comments regarding proposed NRC Staff implementation of the ACRS report dated July 15, 1987 regarding this matter.

Friday, December 4, 1987

8:30 a.m.-9:30 a.m.: Nuclear Industry Activities (Open)—Briefing regarding the U.S. nuclear industry initiatives to improve the operations of nuclear power plants, resolve applicable generic issues effectively, and interface more effectively with the NRC.

9:30 a.m.-10:30 a.m. and 10:45 a.m.-12:30 p.m.: Requirements for Advanced Light-Water Reactors (Open)—Briefing by representatives of EPRI regarding proposed requirements for advanced light-water nuclear power reactors.

1:30 p.m.-2:15 p.m.: Containment Performance (Open)—Briefing on proposed NRC position regarding containment performance requirements for nuclear power plants.

2:15 p.m.-2:45 p.m.: Peach Bottom Nuclear Power Station (Open)—Briefing regarding NRC criteria for proposed restart of the Peach Bottom Nuclear Power Station.

2:45 p.m.-4:15 p.m.: Control Room Habitability (Open)—Review of proposed NRC Task Action Plan regarding resolution of Generic Issue 83, Control Room Habitability.

4:15 p.m.-4:45 p.m.: TVA Nuclear Power Plant Activities (Open)—Discuss proposed ACRS activities regarding proposed changes in TVA management and restart of TVA nuclear plants.

4:45 p.m.-6:15 p.m.: Preparation of ACRS Reports (Open)—Discuss proposed reports to the NRC regarding nuclear power plant instrument air systems, safety implications of control systems, and TVA management changes (tentative).

Saturday, December 5, 1987

8:30 a.m.-11:00 a.m.: Preparation of ACRS Reports (Open)—Discuss proposed reports to NRC regarding items considered during this meeting.

11:00 a.m.-11:20 a.m.: Selection of ACRS Officers (Closed)—Nomination and election of ACRS officers for CY 1988.

This session will be closed to discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

11:20 a.m.-12:00 Noon: New ACRS Members (Closed)—Discuss qualification of candidates proposed for nomination as members of the ACRS.

This session will be closed to discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

1:00 p.m.-2:00 p.m.: ACRS Subcommittee Activities (Open)—Hear and discuss reports of assigned ACRS subcommittee activities regarding safety-related and regulatory matters, including decay heat removal and thermal-hydraulic phenomena in nuclear plants.

2:00 p.m.-2:30 p.m.: Miscellaneous (Open)—Complete discussion of matters considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information related to the internal personnel rules and practices of the agency (5 U.S.C. 552b(c)(2)), information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), and information the premature release of which is likely to significantly frustrate the Commission in its statutory function (5 U.S.C. 552b(c)(9)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: November 25, 1987.

John C. Hoyle

Advisory Committee Management Officer.

[FR Doc. 87–27587 Filed 11–30–87; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENT'S COMMISSION ON PRIVATIZATION

Business Meeting and Hearings

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

DATE AND TIMES: December 1 and 2, 1987. Business Meeting—December 1, beginning at 10:00 a.m. Hearings—December 1, beginning at 2:00 p.m. and December 2, beginning at 9:00 a.m.

ADDRESS: Room 124 of the Dirksen Senate Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Wiley Horsley, Commission Staff Manager, 1825 K Street NW., Suite 310, Washington, DC 20006, 202/634–4874.

SUPPLEMENTARY INFORMATION: The purpose of the business meeting is to discuss issues on the loan portfolios. The purpose of the hearings is to hear witness testimony relating to air traffic control. The business meeting and the hearings are open to the public.

James C. Miller III,

Director, Office of Management and Budget.

[FR Doc. 87–27642 Filed 11–27–87; 2:09 pm]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-25145; File No. NYSE-87-29]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by New York Stock Exchange, Inc.

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted on August 28, 1987, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder to increase the size of orders subject to the Exchange's one-half point error guarantee provision contained in NYSE Rule 123A.47(b) from 1,099 shares to 2,099 shares.[1] Under the proposal, NYSE specialists would guarantee execution prices they report to member firms through SuperDot [2] up to one-half point for marketorders, marketable limit price orders and limit price orders for sizes up to 2,099 shares.

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Rel. No. 24940, September 24, 1987) and by Publication in the **Federal Register** (52 FR 36658, September 30, 1987). No comments were received regarding the proposal.

In its filing the Exechange indicates that the increased order size eligibility for shares subject to the price reporting protection provided in Rule 123.47(b) is a consequence of the growing average size of trades executed on the Exchange. According to the NYSE, in the first six months of 1987, the average trade size has increased to 2,045 shares.[3] In addition, the Exchange notes that a number of member firms who subscribe to SuperDot requested that the Exchange increased the size of orders subject to the Rule so that they will benefit from the efficiencies of SuperDot for larger orders. The Exchange believes that by increasing the size limit from 1099 shares to 2099 shares for the error guarantee provision member firms will benefit because more orders will be subject to rapid, efficient and cost-effective executions and reports through the Exchange systems. Further, the NYSE states that the increase in order size will also enhance the trade comparison process by "locking in" both the incorrect and correct prices of more orders then is now possible.

The Commission believes that it is reasonable for the Exchange to increase the size of orders subject to the one-half point error guarantee provision provided in Rule 123.47(b) in that the increase should accommodate the expanding size of trades executed on the Exchange as well as allow member firms who participate in the SuperDot system to continue to resolve pricing errors of orders routed to specialists through SuperDot quickly and efficiently.[4] Accordingly, we believe that increasing specialist responsibility for pricing errors or orders up to 2,099 shares is consistent with section 6(b)(5) of the Act in that it will, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, processing information with respect to and facilitating transactions in securities. In addition, the rule change is also consistent with 17A(a)(1) of the Act in that it will enhance the prompt and accurate clearance and settlement of securities transactions. The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: November 20, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-27582 Filed 11-30-87; 8:45 am]

BILLING CODE 8010-01-M

[1] Under Rule 123A.47(b), a specialist guarantees the execution price he reports to member firms via SuperDot, unless the reported price is more than ½ point away from the actual execution price, in which case the actual price is binding.

[2] The NYSE's SuperDot system is an order routing and execution system for market and marketable limited price orders up to a certain size. Currently the size limit for the system is 2,099. SuperDot electronically routes orders from a NYSE Member's office to the specialist in the particular stock on the floor of the NYSE.

[3] NYSE Business Research Department Statistics.

[4] According to the Exchange, it costs a member firm an average of $75-$80 per trade to correct an erroneously reported execution price. In addition, reported errors are not corrected immediately; there is usually a lag in correcting erroneously reported prices. During the time lag, member firms usually quote the erroneous-price to their customers. The one-half point guarantee provided in Rule 123A.47(b) protects both the member firm and its customer since the specialist absorbs any price difference below one-half a point. In addition, the Rule eliminates the cost a member firm would incur if it were to correct the erroneous price.

[5] 17 CFR 200.30-3.

[Rel. No. IC-16146; 813-82]

Elfun Diversified Fund; Application

November 24, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Elfun Diversified Fund ("Applicant" or "Fund").

Relevant 1940 Act Sections: Exemption requested under section 6(b) from the provisions of section 10(a), 13(a)(4), 15(a), 15(c), 16(a), 30(d) and 32(a).

Summary of Application: Applicant seeks an order exempting it from certain shareholder voting requirements, permitting annual reports to unitholders and permitting all of its trustees to be officers or employees of General Electric Company ("GE").

Filing Date: The application was filed on September 30, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 21, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC. 20549. Applicant, 292 Long Ridge Raod, Stamford, Connecticut 06904.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272-3037, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations: 1. The Fund is a trust created pursuant to an agreement among the Fund's trustees ("Trustees") dated June 1, 1987. It is a diversified, open-end, management investment company, and is so organized as to meet the requirements for an "employees' securities company" within the meaning of section 2(a)(13) of the Act. The Fund has not yet commenced operations.

2. Purchase of units of the Fund ("Fund Units") may be made by regular and senior members of the Elfun Society, on behalf of trusts established for the exclusive benefit of such members and by General Electric Company ("GE") and its subsidiary and controlled companies. Regular members of the Elfun Society are selected from among the higher level exempt-salaried employees of GE and its subsidiary and controlled companies and senior members are former regular members who have retired from these companies. Fund Units may also be purchased by the spouse and children of any eligible living Elfun Society member or by the unremarried surviving spouse of a former Elfun Society member and by the trustees of certain profit-sharing trusts hereafter created by GE and by members of the GE Board of Directors. As of May 1, 1987, there were approximately 18,096 regular members and 8,964 senior members of the Elfun Society.

3. The objective of the Fund is to seek the highest total investment return through strategic asset allocation of invested capital among diverse investment alternatives consistent with a degree of risk determined by the Trustees to be acceptable and consistent with prudent investment management and preservation of capital. The fund shall seek to achieve its objective by investing in a broadly diversified portfolio of securities, including common stocks, covertible securities, preferred stock, bonds and foreign securities as well as more illiquid investments such as restricted non-public securities. Freedom to move among these different types of securities is the foundation of the Fund's flexible investment policy. The alternatives will be established from time to time by the Trustees of the Fund with the assistance of its investment advisor. The proportion invested in each type of security shall vary in accordance with the Trustees' and advisor's interpretation of economic conditions and analysis of security values. The Fund does not intend to concentrate investments in any particular industry.

4. The Trustees have contracted for investment management services with General Electric Investment Corporation ("GEI"), a wholly-owned subsidiary of GE which is registered as an Investment Adviser with the Securities and Exchange Commission. GEI is subject to removal by the Trustees at any time, without penalty, on sixty days written notice. The contract for investment management provides that the appointment of the investment manager is subject to annual review by the Trustees.

5. The Fund's five Trustees are all officers or employees of GE who have been assigned to the operations of GEI. The Trustees do not receive any compensation from the Fund for serving as Trustees, although the Fund will be required to reimburse GEI for the portion of the remuneration such persons recieve from GE which is allocable to the time they spend on Fund matters in their capacity as GEI employees. Although GEI and GE provide various services to the Fund and are reimbursed for the reasonable costs of providing such services, no element of profit is included in such charges.

6. The Trustees, GEI, and GE all have a very strong interest in assuring that the Fund is well managed. While GE does not sponsor the Fund, the Fund is being established to offer an additional investing opportunity which is open solely to certain GE employees, former employees, and their immediate relatives. GE and its subsidiaries may also invest in the Fund. Thus, the success of the Fund has a strong bearing on employee moral and satisfactory employee relations, a matter, in which GE is vitally interested. It is also clear from the extensive experience and knowledge of the persons who have been selected to act as Trustees of the Fund that the addition of outside persons as trustees is not necessary in order to bring the Fund the needed skills for its operation. Also, the Fund has estimated that the addition of two disinterested trustees would add approximately $25,000 of annual operating expenses. For these reasons, the Fund requests exemption from section 10(a) of the 1940 Act.

7. The Trustees have retained the right to terminate the Fund. In the case of such termination, the Unitholders will receive the net asset value of the Unites held by them. Since all participants in the Fund will be aware of this right of termination prior to purchasing Fund Units, an exemption is requested from section 13(a)(4) of the 1940 Act to the extent required to permit the Fund to be terminated without a vote of the Unitholders.

8. Exemption is requested from the portion of Section 15(a) which would require that the contract between the Fund and GEI be approved by persons holding a majority of the outstanding Fund Units. Since all of the Trustees are interested persons of GEI, exemption is also requested from the requirements of section 15(c) which provide for approval by a majority of disinterested trustees of any renewal of an investment advisory contract. The investment advisory services to be furnished to the Fund will be furnished at cost. Thus, it is highly unlikely that such a contract could be placed with any entity other than one, such as GEI, which is uniquely related to the needs and welfare of the participants in the Fund. Furthermore, were the Fund required to make solicitations of its Unitholders for this purpose or add disinterested trustees so as to meet the renewal approval requirements, a substantial increased cost burden would be placed on the Fund. Moreover, GE's interest in the success of the Fund is so fundamental that any risk of the retention of unsatisfactory investment advisers would seem remote.

9. Exemption is requested from section 16(a) because the Fund does not plan to have the Trustees elected by the Unitholders. This is consistent with the Fund's approach to minimizing costs and the burden to the Fund participants.

10. Exemption from section 30(d) is requested to the extent that reports to Unitholders more than once a year would be required. The Fund proposes to make an annual report under section 30(d). In addition, the Fund will also file with the Commission other required reports and will furnish the Commission with any other reports and communications transmitted to Unitholders. It is believed that the foregoing reports should adequately serve the interest both of the Commission and of the investors, and that the requirement of additional reports to Unitholders would not be justified in light of the time and expense which the preparation of such reports would require.

11. Exemption from section 32(a) is being requested since the Fund does not plan to have Unitholders ratify the selection of auditors. A nationally recognized accounting firm has been selected by the Trustees and, it is contemplated that only firms of a similar caliber will be selected in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-27584 Filed 11-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16148; 812-6657]

First Trust of Insured Municipal Bonds, et al.; Application

November 24, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The First Trust of Insured Municipal Bonds, The First Trust GNMA, The First Trust of Insured Municipal Bonds—Multi-State, The First Trust Advantage Fund, First Trust Fund, First Trust Tax-Free Bond Fund, First Trust America Fund, L.P., and Clayton Brown & Associates, Inc.

Relevant 1940 Act Sections: Order requested under sections 11(a) and 11(c).

Summary of Application: Applicants request an order permitting certain offers of exchange under sections 11(a) and 11(c) of the 1940 Act.

Filing Date: The application was filed on March 19, 1987 and amended on October 21, 1987, November 5, 1987 and November 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on December 21, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: 300 West Washington Street, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application is available for a fee from either the Commission's Public Reference Branch in person, or the Commission's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations: 1. The First Trust of Insured Municipal Bonds, The First Trust GNMA, The First Trust of Insured Municipal Bonds—Multi-State and The First Trust Advantage Fund are registered unit investment trusts (the "UITs") the sponsor principal underwriter of which is Clayton Brown & Associates, Inc. ("Clayton"). First Trust Fund, First Trust America Fund, L.P. and First Trust Tax-Free Bond Fund are registered open-end, diversified, management investment companies distributed by Clayton (the "Mutual Funds").

2. Clayton Serves as sponsor and principal underwriter of each of the UITs. Each UIT is governed by a Standard Terms and Conditions of Trust, with Clayton as depositor and an independent trustee ("Trustee"). Units of the UITs were originally offered to the public at a public offering price which included a sales charge ranging from 3.0% to 4.9% of the public offering price. Clayton maintains a secondary market for units of the UITs. The sales charge imposed upon a sale in the secondary market ranges from 3.7% to 5.8% of the public offering price. The sales charge imposed upon a sale of shares of the Mutual Funds ranges from 0 to 4.75% of the public offering price, with reductions for certain volume purchases.

3. Applicants propose to offer to all unitholders ("Unitholders") of existing series of the UITs which were deposited before October 22, 1986, the date on which the Tax Reform Act of 1986 was enacted into law, the opportunity to exchange their units for shares of any existing series of the Mutual Funds at the net asset value per share of such Mutual Fund next computed after receipt of the exchange request. No sales charge or administrative fee will be imposed in connection with the exchange. To qualify for the exchange offer, a Unitholder must have held his units for a period of at least six months. In addition, in order to exchange his units for shares of any particular Mutual Fund, a Unit-holder must qualify to purchase shares of that fund directly.

4. Unitholders will be provided a prospectus for the Mutual Fund into which they desire to exchange before the sale of the Mutual Fund shares takes place. Such prospectus will disclose fully and prominently all fees and charges, including management fees, Rule 12b-1 fees, and other charges imposed on the holders of shares of such Mutual Fund.

5. The proposed exchange offer will allow Unitholders to more from an investment in a UIT to a Mutual Fund where there has been a re-evaluation of or a change in their investment goals or their economic or tax situations, and they now deem shares of one of the Mutual Funds to be a more suitable investment for them.

Applicant's Legal Conclusions: 1. The proposed exchange offer would not have inequitable results to the Unitholders who choose to exchange their units for Mutual Fund shares since such Unitholders will have done so in response to a reevaluation of, or a change in, their investment goals of their economic or tax situations. The exchange offer would allow them to obtain what they have determined to be a more suitable investment.

2. The proposed exchange offer would not have inequitable results to the existing shareholders of the Mutual Funds. Such shareholders would be the beneficiaries of the positive effects which an influx of money tends to have on a mutual fund. The six month holding period requirement would eliminate the likelihood that investors would attempt to take advantage of the fact that a Mutual Fund may have a lower sales charge than the unit investment trust from which they exchanged.

3. The proposed exchange offer would not have inequitable results to the remaining Unitholders of the unit investment trusts from which investors exchanged. Applicants believe that the proposed exchange offer is not a threat to induce large numbers of investors to redeem units of desirable UIT investments, and Clayton has agreed to protect the UITs against premature termination. All such Unitholders would have the benefit of the option to exchange under the exchange offer or to redeem their units at any time. This conclusion is consistent with past orders given by the Commission approving other types of exchange offers involving unit investment trusts.

4. Since the proposed exchange offer would not have any inequitable results to the parties involved, Applicants request that the proposed exchange offer be permitted under sections 11(a) and 11(c) of the 1940 Act.

Applicants' Conditions: If the requested order is granted, Applicants agree that they will be subject to the following conditions:

1. Applicants will comply with applicable provisions of Proposed Rule 11c-1.

2. Clayton, as sponsor of the UITs, will not direct the Trustee of a UIT to terminate the indenture ("Indenture") creating such UIT and thus terminate and liquidate the UIT created by such Indenture if the value of such UIT as shown by any evaluation by the Trustee of such UIT shall be greater than or equal to 20% of the aggregate principal amount of bonds initially deposited in such UIT; provided, however that the sponsor may direct the Trustee of a UIT

to terminate such Indenture and terminate and liquidate such UIT at any time that the sponsor is legally obligated to direct the Trustee to do so because it is in the best interest of the Unitholders of such UIT.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-27583 Filed 11-30-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2295]

Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on November 20, 1987, I find that Anderson and Cherokee Counties in the State of Texas constitute a disaster loan area because of damage from severe storms and tornadoes occurring on November 15-16, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on January 21, 1988, and for economic injury until the close of business on August 22, 1988, at:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051

or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 229512 for physical damage and for economic injury the number is 657400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 24, 1987.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 87-27499 Filed 11-30-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/03-0051]

Capital SBIC, Inc.; Revocation of License To Operate as Small Business Investment Company

Notice is hereby given that Capital SBIC, Inc., 691 State Highway #33, Trenton, New Jersey 08619 has had its license revoked and no longer operates as a small business investment company under the Small Business Investment Act of 1985, as amended (the Act). Capital SBIC, Inc., was licensed by the Small Business Administration on February 27, 1963.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the revocation was effective September 24, 1987, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 24, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investments.

[FR Doc. 87-27580 Filed 11-30-87; 8:45 am]

BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Annual Report on Distribution and Use of TVA Fertilizers.

Frequency of Use: Annually.

Type of Affected Public: Businesses or other for-profit small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 200.

Estimated Total Annual Burden Hours: 215.

Need For and Use of Information: The information requested from distributors is needed to complete contractual requirements by distributors, to report on the use of TVA fertilizers, the use of new manufacturing processes, and to provide feedback for program evaluation and direction.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 87-27526 Filed 11-30-87; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q; Week Ended November 20, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45288

Date Filed: November 16, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 14, 1987.

Description: Application of Servicios De Transportes Aereos Fueguinos, S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations requests authority to engage in non-scheduled property and mail operations between points in Argentina and points in the

United States. The requested authority is to complete not more than two (2) flights per week.

Docket No. 45290

Date Filed: November 16, 1987.
Due Date for Answers, conforming applications, or Motions to Modify Scope: December 14, 1987.
Description: Application of Air Train, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity which will authorize Air Train to engage in foreign charter air transportation of property and mail.

Docket No. 45292

Date Filed: November 16, 1987.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 14, 1987.
Description: Application of Zambia Airways Corporation Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit authorizing it to engage in scheduled and charter foreign air transportation of persons, property and mail between a point or points in the Republic of Zambia and points in the United States via intermediate points of Africa, and beyond to points in Canada.

Docket No. 45297

Date Filed: November 18, 1987.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 16, 1987.
Description: Application of Trans World Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its certificate of public conveniece and necessity for Route 147 authorizing it to provide air transportation services between a point or points in the United States and Stockholm, Sweden, as well as local traffic rights between Stockholm, Sweden, on the one hand, and Oslo, Norway, and Copenhagen, Denmark, on the other.

Docket No. 45299

Date Filed: November 18, 1987.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 16, 1987.
Description: Application of Alaska Airships, pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled interstate air transportation of persons, property of mail between the terminal point Kotzebue, and the terminal point Kiana, Alaska.

Docket No. 45303

Date Filed: November 19, 1987.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 17, 1987.
Description: Application of Pan America World Airways, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, requests an amendment of its certificate of public convenience and necessity for Route 136 to add Lima, Peru.

Docket No. 45304

Date Filed: November 20, 1987.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 18, 1987.
Description: Application of Air Transat pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit and for charter authority for flights from Canada to any point or points in the United States.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 87-27548 Filed 11-30-87; 8:45 am]
BILLING CODE 4910-62-M

Aviation Proceedings: Agreements Filed During the Week Ending—November 20, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45281 R-1 – R-3

Parties: Members of International Air Transport Association.
Date Filed: November 16, 1987.
Subject: North Atlantic-Middle East Baggage.
Proposed Effective Date: January 1, 1988.

Docket No. 45282 R-1 & R-2

Parties: Members of International Air Transport Association.
Date Filed: November 16, 1987.
Subject: South Atlantic Africa/Europe Fares.
Proposed Effective Date: January 1 and March 16, 1988.

Docket No. 45283 R-1 & R-2

Parties: Members of International Air Transport Association.
Date Filed: November 16, 1987.
Subject: Europe—Africa Fares.
Proposed Effective Date: January 1, 1988.

Docket No. 45284

Parties: Members of International Air Transport Association.
Date Filed: November 16, 1987.
Subject: Austrialia to Europe Fares.
Proposed Effective Date: December 11, 1987.

Docket No. 45285 R-1 – R-7

Parties: Members of International Air Transport Association.
Date Filed: November 16, 1987.
Subject: Japan-Korea-So. East Asia Fares.
Proposed Effective Date: December 1, 1987 and January 1, 1988.

Docket No. 45286 R-1 & R-2

Parties: Members of International Air Transport Association.
Date Filed: November 16, 1987.
Subject: South Pacific Fares.
Proposed Effective Date: December 1, 1987/January 16, 1988.

Docket No. 45287

Parties: Members of International Air Transport Association.
Date Filed: November 16, 1987.
Subject: Passenger Sales Agency Administration Rules—Canada.
Proposed Effective Date: December 15, 1987.

Docket No. 45295 R-1 – R-6

Parties: Members of International Air Transport Association.
Date Filed: November 17, 1987.
Subject: South Atlantic-Middle East Expedited Reso.
Proposed Effective Date: January 1, 1987.

Docket No. 45296

Parties: Members of International Air Transport Association.
Date Filed: November 17, 1987.
Subject: Rate Levels from Poland.
Proposed Effective Date: January 1, 1988.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 87-275471 Filed 11-30-87; 8:45 am]
BILLING CODE 4910-62-M

Coast Guard

[CGD 87-088]

Lower Mississippi River Waterway Safety Advisory Committee Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L 92-403; 5 U.S.C. App I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will

be held on Tuesday, January 12, 1988, in the 29th Floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, LA. The meeting is scheduled to begin at 9:00 a.m. and end at 12:00 noon. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the August 18, 1987, meeting.
3. Report of the Bridge Safety Ad-Hoc Committee.
4. Announcement of reduction in size of the New Orleans General Anchorage.
5. Update of old business:
a. Bridge-to-Bridge Radiotelephone Regulations.
b. VTS New Orleans Surveillance Expansion Project.
c. Gretna Light television camera installation.
6. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander V.O. Eschenburg, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6901.

Dated: November 19, 1987.

J.D. Sipes,

Captain, U.S. Coast Guard, Chief of Staff, Eighth Coast Guard District.

[FR Doc. 87-27563 Filed 11-30-87; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Noise Exposure Map Notice

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city/Borough of Juneau for Juneau International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is October 9, 1987.

FOR FURTHER INFORMATION CONTACT: James S. Perham, 907-271-5448.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Juneau International Airport are in compliance with applicable requirements of Part 150, effective October 9, 1987.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979, (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City and Borough of Juneau. The specific maps under consideration are identified as parts 1 and 2 for 1986 and 1991 in the sponsor certification segment of the Noise Exposure Maps Amendment submittal. The FAA has determined that these maps for Juneau International Airport are in compliance with applicable requirements. This determination is effective on October 9, 1987. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying on noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Airports Division, 701 C Street, Box 14, Anchorage, Alaska 99513

Mr. Paul D. Bowers, Manager, Juneau International Airport, 1873 Shell Simmons Drive, Juneau, Alaska 99801.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Anchorage, Alaska, October 9, 1987.

Franklin L. Cunningham,

Director, Alaskan Region.

[FR Doc. 87-27543 Filed 11-30-87; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at Houghton County Airport, Calumet, MI; Closing

Notice is hereby given that on October 13, 1987, the Flight Service Station at Houghton County Airport, Calumet, Michigan was closed. Services to the general public of Houghton, Michigan Flight Plan Area, formerly provided by this office, are being provided by the Automated Flight

Service Station in Green Bay, Wisconsin. This information will be reflected in the Federal Aviation Administration organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752, 49 U.S.C. 1354)

Issued in Des Plaines, Illinois on October 25, 1987.

Edward J. Phillips,

Acting Deputy Director, Great Lakes Region.

[FR Doc. 87-27544 Filed 11-30-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Westchester County, New York

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of conversion of a draft environmental impact statement to an environmental assessment with possible finding of no significant impact.

SUMMARY: The FHWA is using this notice to advise the public that an Environmental Impact Statement will not be prepared for two proposed highway projects in Westchester County, New York. This notice supersedes the previous notice which was published on August 8, 1985, at 50 FR 32132.

FOR FURTHER INFORMATION CONTACT: Joseph M. Yourno, Acting Director, Facilities Design Division, New York State Department of Transportation, State Campus, 1220 Washington Avenue, Albany, New York 12232. Telephone: (518) 457-6452; or Victor E. Taylor, Division Administrator, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207. Telephone: (518) 472-3616.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration in cooperation with the New York Department of Transportation had intended to prepare an Environmental Impact Statement on a proposal (Project Number PIN 8216.44 and 8216.45) to eliminate five (5) high accident signalized intersections along Saw Mill River Parkway in the City of Yonkers and the Town of Greenburgh, Westchester County. The study area for Project Number PIN 8216.44 began at Odell Avenue and ended just north of Ravensdale Avenue. The study area for Project Number PIN 8216.45 began about 1,800 feet south of Ogden Avenue and ended about 2,300 feet north of Ogden Avenue.

Based on local community concerns about potential environmental impacts in relation to anticipated benefits, the originally proposed elimination of at grade intersections, closure of some access points, and construction of bridges across the Saw Mill River Parkway with interchanges to provide access to and from the Parkway, are no longer under consideration.

The Federal Highway Administration in cooperation with the New York State Department of Transportation will be preparing an Environmental Assessment on the proposal under Project Number PIN 8216.45 to raise the grade to reduce flooding potential of the Saw Mill River parkway from Lawrence Street to Ashford Avenue and improve the sight distance for southbound traffic on the Saw Mill River Parkway approaching the Lawrence Street intersection. Upon review of the Environmental Assessment, and any public meeting, comments and other comments regarding the Environmental Assessment, it is anticipated that FHWA will make a Finding of No Significant Impact.

Alternatives under consideration include (1) taking no action; (2) raising the parkway profile, retaining both river structures and constructing an overflow channel along the east of the parkway and (3) raising the parkway profile and replacing the northerly river structure to provide a larger waterway opening with no overflow channel required.

As part of the early coordination process, letters describing the proposed action and soliciting comments will be sent to appropriate Federal and State Agencies. In addition, local agencies, and private organizations and citizens who may have interest in this proposal will be contacted. The Environmental Assessment will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Environmental Assessment should be directed to the FHWA or NYSDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 23, 1987.

Victor E. Taylor,

Division Administrator, Federal Highway Administrator, Albany, New York.

[FR Doc. 87-27527 Filed 11-30-87; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petitions for Exemption or Waiver

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that seven railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the 12-hour limitation.

Eureka Southern Railroad (EUKA)

FRA Waiver Petition Docket No. HS-87-11

The EUKA seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The EUKA states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help the EUKA's operation if it encountered unusual operating conditions or circumstances. The EUKA provides service between Willits and Eureka, California, a distance of 145 miles.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

City of Prineville Railway (COP)

FRA Waiver Petition Docket No. HS-87-12

The COP seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The COP states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The COP provides service between Prineville and Prineville Junction, Oregon.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Central Montana Rail Incorporated (CMR)

FRA Waiver Petition Docket No. HS–87–13

The CMR seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The CMR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The CMR provides service from a connection with the Burlington Northern at Spring Creek Junction to Geraldine, Montana, a distance of 66 miles.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Moscow, Camden & San Augustine Railroad (MCSA)

FRA Waiver Petition Docket No. HS–87–14

The MCSA seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The MCSA states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The MCSA provides service over 6 miles of track between Moscow and Camden, Texas.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Otter Tail Valley Railroad (OTVR)

FRA Waiver Petition Docket No. HS–87–15

The OTVR seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The OTVR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The OTVR provides service between Fergus Falls and Delworth, and between Fergus Falls and Avon, all within the state of Minnesota.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Connecticut Central Railroad (CCR)

FRA Waiver Petition Docket No. HS–87–16

The CCR seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The CCR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The CCR provides service on over 32 miles of track between New Haven and Middleton, with branch lines extending the operation to Cromwell and Portland, all within the state of Connecticut.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

South Central Tennessee Railroad (SCTR)

FRA Waiver Petition Docket No. HS–87–17

The SCTR seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The SCTR is a subsidiary of Kyle Railways and provides service between Colesburg and Hahenwald, Tennessee, a distance of 50.5 miles.

The SCTR had previously been issued an Hours of Service waiver in response to FRA Waiver Petition Docket No. HS–84–7, on March 28, 1985. This waiver expired on March 28, 1987.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. All communications concerning these proceedings should identify the appropriate docket number (e.g. Waiver Petition Docket Number HS–87–12) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before January 15, 1988, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on November 16, 1987.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87–27530 Filed 11–30–87; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting and Revision to Earlier Agenda

The agenda for the December 9 and 10 Commissioner's Advisory Group has been revised subsequent to its original publication in the November 18, 1987 **Federal Register** (52 FR 44273).

The revised agenda is as follows:

Wednesday, December 9, 1987

Role of Practitioner
Recurring Collection Problems
Criminal Enforcement Program
Audit Quality

Thursday, December 10, 1987

Complexity and Change
General Discussion
Observations on the Advisory Group

Due to seating capacity constraints, notification of intent to attend the meeting or if you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, 1111 Constitution

Avenue NW., Room 3014, Washington, DC 20224 no later than December 1, 1987. Mr. Hilgen can be reached on (202) 566–4143 (not toll-free).

FOR FURTHER INFORMATION CONTACT:
Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, (202) 566–4143 (not toll-free).

Lawrence B. Gibbs,
Commissioner.

[FR Doc. 87–27577 Filed 11–25–87; 4:15 pm]
BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 230
Tuesday, December 1, 1987

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).

COMMODITY CREDIT CORPORATION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 44274, November 18, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., November 23, 1987.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of Special Meeting on 7–23–87.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Docket re: BCP-31a, Peanut Loan and Purchase for the 1986 and Subsequent Marketing Years.
4. Docket re: CX-308b, Revision 1, Guarantee Arrangements Required By CCC Under Its Short and Intermediate Term Export Credit Guarantee Program.
5. Memorandum re: Fiscal Year 1988 Section 416 Commodity Determination and Revised Fiscal Year 1987 Commodity Determination.
6. Resolution re: Ratification of Target Export Assistance Funding—Japan.
7. Resolution re: Ratification of Commodities Available for Public Law 480 During Fiscal Year 1987, CZ–266, Resolution No. 24, Amendment 3.
8. Resolution re: Ratification of Commodities Available for Public Law 480 During Fiscal Year 1988, CZ–266, Resolution No. 25.

CONTACT PERSON FOR MORE INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 475–5490.

Dated: November 25, 1987.

James V. Hansen,

Secretary, Commodity Credit Coproration.

[FR Doc. 87–27588 Filed 11–25–87; 4:37 pm]

BILLING CODE 3410-05-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 8, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–27611 Filed 11–27–87; 9:55 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 22, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–27612 Filed 11–27–87; 9:55 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., December 22, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–27613 Filed 11–27–87; 9:55 am]

BILLING CODE 6351-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

ACTION: Notice is hereby given, pursuant to the Government in the Sunshine Act [5 U.S.C. § 552b(e)(3)], of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board will be held December 1, 1987.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 1, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary of the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 (703–883–4003).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Summary Prior Approval Items;
2. 1988 Review of Farm Credit System Building Association Budget and Assessment response;

*Certification Under Section 4.28(J) of the Farm Credit Act of 1971, as Amended;

*4. Examination and Enforcement Matters; and

*5. Legislative Update.

Date: November 25, 1987.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 87–27601 Filed 11–25–87; 5:10 pm]

BILLING CODE 6705-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 25, 1987.

TIME AND DATE: 10:00 a.m., Thursday, December 3, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act on the following:

1. *Southern Ohio Coal Company*, Docket Nos. WEVA 86–35–R, etc. (Issues include whether the Administrative Law Judge erred in not modifying a section 104(d)(2) order to a section 104(a) citation when he deleted the inspector's finding of unwarrantable failure and whether in sustaining another section 104(d)(2) order, the judge erred in finding that the operator violated 30 C.F.R. § 75.200 and whether the violation was the result of the operator's unwarrantable failure.
2. Consideration of possible revisions to Commission Procedural Rules 20–31. 29 CFR 2700.20 through 2700.31.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance

*3. Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8), and (9).

of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87–27658 Filed 11–27–87; 1:26 pm]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:00 p.m., Wednesday, November 25, 1987.

The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Further consideration of testimony on banking issues.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: November 25, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–27624 Filed 11–27–87;11:39 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, December 7, 1987:

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–27698 Filed 11–27–87; 3:41 am]

BILLING CODE 6210–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, December 8, 1987.

PLACE: Board Room (Room 812A), Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first five items are open to the public. The last item is closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Capsizing of the U.S. Charter Fishing Vessel FISH–N–FOOL, Pacific Ocean at Roca Ben Baja California Notre, Mexico, February 5, 1987
2. Safety Study: Lap/Shoulder Belts
3. Followup Letters to Receipients of Lap Belt Safety Study Recommendations
4. Case Summaries to the Lap/Shoulder Belts Safety Study
5. Highway Summary Report: Collision of Tour Bus with Bridge Overpass on the George Washington Memorial Parkway, Alexandria, Virginia, April 4, 1987
6. Opinion and Order: Administrator v. Nazimek, Docket SE–6759; disposition of appeals of both parties (Calendared by Chairman Burnett)

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

November 27, 1987.

[FR Doc. 87–27683 Filed 11–27–87; 3:18 pm]

BILLING CODE 7533–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (52 FR 44956 November 23, 1987).

STATUS: Closed meeting.

PLACE: 450 5th Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, November 17, 1987.

CHANGES IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting on Tuesday, November 24, 1987, following the 2:00 p.m. open meeting.

Chapter 11 proceeding.

Commissioner Grundfest, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Andrew Feldman at (202) 272–2091.

Jonathan G. Katz,

Secretary.

November 25, 1987.

[FR Doc. 87–27585 Filed 11–30–87; 4:37 am]

BILLING CODE 8010–01–M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 9:00 a.m.–5:00 p.m., Thursday, December 3, 1987.

PLACE: National Trust for Historic Preservation, 1785 Massachusetts Avenue, NW., Washington, DC 20036.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525).

AGENDA (TENTATIVE): Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the eighteenth meeting. Consideration of grant application matters.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789–5700.

Dated: November 27, 1987.

Samuel W. Lewis,

President, United States Institute of Peace.

[FR Doc. 87–27643 Filed 11–27–87; 12:56 pm]

BILLING CODE 3155–01–M

federal register

Tuesday
December 1, 1987

Part II

Department of Education

34 CFR Parts 668 and 690

Student Assistance General Provisions and Pell Grant Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 690

Student Assistance General Provisions and Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations and the regulations for the Pell Grant Program. These regulations simplify procedures, clarify requirements, reduce administrative burden while maintaining program integrity, and incorporate changes to the Higher Education Act of 1965 (HEA) made by the Consolidated Omnibus Budget Reconciliation Act of 1985, the Higher Education Amendments of 1986, and the Higher Education Technical Amendments Act of 1987. These regulations further incorporate applicable provisions of the Compact of Free Association and consolidate provisions common to all the student financial assistance programs authorized by Title IV of the HEA (Title IV, HEA programs).

EFFECTIVE DATE: Generally, these regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. Sections 668.8, 668.13, 668.14, 668.15, 668.17, 668.19, 668.22, 668.23, 668.32, 668.34, and 668.96 will become effective after the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. These regulations are generally not subject to section 482(c) of the HEA because they do not constitute "additional regulatory changes initiated by the Secretary affecting the general administration of" the title IV, HEA programs. However, the following provisions apply only to award years beginning on or after July 1, 1988:

(1) The new requirements in § 668.7(a)(6) and (7) for a student to certify that he or she does not owe a refund on a grant awarded and is not in default on a loan made under a Title IV, HEA program.

(2) The new provisions in § 668.8(b)(2) governing the eligibility for the Pell Grant Program of courses in English as a second language.

(3) The new requirement in § 668.19(a)(2) that a financial aid transcript be requested before a student may receive any Title IV, HEA program funds.

(4) The new rule in § 668.19(a)(3)(iv) and (v) regarding a school's authority to transmit GSL or SLS proceeds and to certify PLUS applications prior to receipt of a financial aid trancript from the student's previous school.

(5) The new requirement in § 668.19(c)(2) that a financial aid trancript include information on a student's previous treatment as an independent student.

(6) The new provision in § 668.20(c)(2) concerning the educational level of instruction of a noncredit or reduced credit remedial course.

(7) The removal of Subparts C, D, and E of 34 CFR Part 690 with regard to determining a student's student aid index and cost of attendance under the Pell Grant Program.

If you want to know the effective date of the other provisions of these regulations, call or write the Departament of Education contact person.

FOR FURTHER INFORMATION CONTACT: John De Cleene or Jeff Andrade, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue SW. (Regional Office Building 3, Room 4318), Washington, DC 20202. Telephone number (202) 732–4888.

SUPPLEMENTARY INFORMATION: On December 12, 1984, the Secretary published a notice of proposed rulemaking (NPRM) for the Student Assistance General regulations in the **Federal Register** (49 FR 48494). These regulations were proposed to clarify requirements, reduce administrative burden on institutions of higher education and vocational schools, and consolidate provisions and definitions common to all the Title IV, HEA programs. The Title IV, HEA programs include the Pell Grant, Guaranteed Student Loan (GSL), PLUS, Supplemental Loans for Students (SLS) (formerly ALAS), Consolidation Loan, State Student Incentive Grant (SSIG), Robert C. Byrd Honors Scholarship (Byrd Scholarship), Income Contingent Loan (ICL), Perkins Loan (formerly National Direct Student Loan (NDSL)), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs. The last three programs are known collectively as "the campus-based programs."

Final regulations revising Subpart C of the Student Assistance General Provisions, concerning the Statement of Educational Purpose and the Statement of Registration Status, were published on June 28, 1985 (50 FR 26950). On November 19, 1986, the Secretary published final regulations revising Subpart A of the Student Assistance General Provisions regulations (50 FR 41920), which included definitions and provisions common to all the Title IV, HEA programs, so that those definitions and provisions would become effective at the same time that new regulations for the GSL and PLUS programs became effective. The Secretary has reviewed the comments with regard to Subpart B of the Student Assistance General Provisions regulations and has made appropriate changes in response to those comments. A summary of the comments and responses is contained in the Appendix to these regulations.

The Secretary has made certain additional changes to Subparts A, B, and C of the Student Assistance General Provisions regulations to incorporate statutory provisions contained in the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, the Higher Education Amendments of 1986, Pub. L. 99–498, the Compact of Free Association, Pub. L. 99–239, and the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50. The Secretary has also consolidated into a revised § 668.7 and a new § 668.8 student and program eligibility criteria that are applicable to all Title IV, HEA programs. A discussion of these changes follows. These regulations are being coordinated with separate proposed and final regulations that reflect statutory changes in the individual Title IV, HEA programs.

Waiver of Notice of Proposed Rulemaking

The Secretary has added a new § 668.8 and made certain changes to §§ 668.1, 668.2, 668.7, 668.12, 668.14, 668.19, 668.23, 668.24, 668.32, and 668.34 to reflect new statutory provisions contained in the Consolidated Omnibus Budget Reconciliation Act of 1985, the Higher Education Amendments of 1986, the Compact of Free Association, and the Higher Education Technical Amendments Act of 1987. In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these latter changes merely implement statutory changes contained in Pub. L. 99–272, Pub. L. 99–498, Pub. L. 99–239, and Pub. L. 100–50 and public comment could therefore have no effect on the content of these regulations. Therefore, pursuant to 5 U.S.C. 553(b)(B), the Secretary finds that publication of proposed regulations as to these

changes is unnecessary and contrary to the public interest.

Substantive Changes in Subparts A, C, and G and Significant Revisions to Subpart B of the Notice of Proposed Rulemaking

I. *Subpart A—General*

Section 668.1 Scope.

The Higher Education Amendments of 1986 added several new student assistance programs to Title IV of the HEA and changed the name of the National Direct Student Loan (NDSL) Program to the Perkins Loan Program. The new programs are the Robert C. Byrd Honors Scholarship (Byrd Scholarship) Program, the Supplemental Loans for Students (SLS) Program (formerly the ALAS Program), the Consolidation Loan Program, and the Income Contingent Loan (ICL) Program. These changes are incorporated into § 668.1.

Section 668.2 General definitions.

A new statutory definition of *Independent student* is found in sections 411F and 480 of the HEA. Therefore, the definition that was found in § 668.7 of these regulations has been removed and a cross-reference to the statute has been placed in § 668.2.

Section 668.7 Eligible student.

The changes made to section 484 of the HEA by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987 increase the number of provisions that are common to a determination of student eligibility for assistance under all Title IV, HEA programs. The Secretary, therefore, has defined "eligible student" in a revised § 668.7 of the Student Assistance General Provisions regulations. The revision of this section reduces the administrative burden on postsecondary educational institutions by consolidating into a single, easily identifiable place common student eligibility provisions that previously have been scattered throughout the various individual program regulations. Section 690.4 of the regulations for the Pell Grant Program is removed, § 690.75 of those regulations is revised, and the sections governing eligibility and selection in the following program regulations will be revised in the near future:

—Perkins Loan Program (§ 674.9).
—CWS Program (§ 675.9).
—SEOG Program (§ 676.9).
—GSL, PLUS, SLS, and Consolidation Loan programs (§ 682.201).
—SSIG Program (§ 692.40).

Eligibility and selection criteria that are specific to each program will be retained in the relevant individual program regulations.

The provisions of § 668.7 do no apply to student eligibility determinations under the Byrd Scholarship Program because the statutory requirements in section 484 of the HEA do not apply to that program. In addition, the provisions of § 668.7 do not apply to borrower eligibility determinations under the Consolidation Loan Program because the borrower eligibility requirements of that program generally do not correspond to the student eligibility requirements of that program generally do not correspond to the student eligibility requirements of the other Title IV, HEA programs.

Regular student (§ 668.7(a)(1)(i)). The requirement of being a regular student in order to qualify as an eligible student has been extended to the GSL, PLUS, SLS, and ILC programs, as a result of a change made to section 484 of the HEA. One exception is provided under section 484(b) of the HEA. The single exception allows students to apply for loans made under the GSL, PLUS, or SLS programs for up to one twelve-month period if they are carrying at least a half-time workload in a program necessary to qualify them for enrollment in a degree or certificate program. This requirement is effective beginning with the 1987–88 award year, or for the GSL, PLUS, and SLS programs for periods of enrollment beginning on or after July 1, 1987.

Enrollment in an elementary or secondary school (§ 668.7(a)(2)). Section 484 of the HEA has been amended to provide that, effective beginning with the 1987–88 award year, or for the GLS, PLUS, and SLS programs for periods of enrollment beginning on or after July 1, 1987, a student who is enrolled in an elementary or secondary school cannot be eligible for assistance under any Title IV, HEA program. These regulations incorporate the new provision. The Secretary does not consider a student to be enrolled in a secondary school if the student is pursuing courses designed to lead to a GED and the student's enrollment in those courses is part of his effort to satisfy the GED requirement under § 668.7(b)(2) of these regulations.

Ability to benefit—remaining eligible for Title IV, HEA program assistance (§ 668.7(a)(3) and (b)). Section 484(d) of the HEA prescribes procedures through which a student who is admitted to an institution on the basis of his or her ability to benefit from the education offered by an institution may remain eligible for assistance under any Title IV, HEA program. These procedures apply to students who are admitted to an institution beginning with the 1987–88 award year, or for the GSL, PLUS, and SLS programs, to students admitted for periods of enrollment beginning on or after July 1, 1987. Section 668.7(b) of these regulations incorporates those procedures.

Under the first procedure, the student must receive a GED before he or she graduates from or is certified by the institution in which he or she is enrolled, or by the end of the first year of study at that institution, whichever is earlier. An eligible student may receive assistance under the Title IV, HEA programs during this period, although, under § 668.20 (concerning remedial coursework), he or she may not receive Title IV, HEA program assistance for any remedial coursework that is designed to lead to a GED. If a student fails to receive the GED within the period required by these regulations, the student loses eligibility, and an institution may not disburse further Title IV, HEA progam funds to that student.

Under the second procedure, the student must be counseled by the institution before admission and must enroll in and successfully complete a remedial or developmental progam that does not exceed one academic year. The student's institution must prescribe the program, although the institution does not have to provide that program itself. If an institution does provide the program, an eligible student may receive Title IV, HEA program aid for the remedial education, if that education qualifies under § 668.20. However, if the institution does not provide the program itself, but the program is provided by another institution, the student may receive Title IV, HEA program aid for the remedial education only if the program meets the requirements of § 668.17 (governing written agreements between eligible and ineligible entities) and § 668.20. If a student does not successfully complete the program, he or she loses eligibility, and an institution may not disburse further Title IV, HEA program funds to that student.

Under the third procedure, the student must, before admission, take a test that measures his or her aptitude to complete successfully the educational program in which he or she plans to enroll and demonstrate that aptitude. The test must be either nationally recognized, standardized, or industry-developed. The test also must meet the criteria of the nationally recognized accrediting agency or association that accredits the institution or its eligible programs. The Secretary considers the term "nationally recognized accrediting agency or association" for this purpose to include

State agencies recognized for the approval of public postsecondary vocational education under the procedures of 34 CFR Part 603. The institution to which a student has applied does not need to administer the test itself. If a student does not demonstrate the appropriate aptitude, he or she may nevertheless remain eligible by enrolling in and successfully completing the remedial program described in the above discussion concerning the second procedure. The same provisions concerning remedial education apply here as apply under the second procedure.

Citizenship and residency requirements (§ 668.7(a)(4)). These regulations consolidate into § 668.7(a)(4) the identical citizenship and residency provisions of the student eligibility requirements contained in the current individual Title IV, HEA program regulations. Section 668.7(a)(4) also implements changes made to section 484 of the HEA by the Higher Education Amendments of 1986 and changes required by the Compact of Free Association.

The Compact of Free Association created two new entities that formerly were part of the Trust Territory of the Pacific Islands: The Federated States of Micronesia and the Marshall Islands. The most recent student eligibility sections for the Pell Grant and campus-based program regulations were published on November 19, 1986 (51 FR 41920), and for the GSL and PLUS programs on November 10, 1986 (51 FR 40886), in anticipation of the consequences of the enactment of the Compact, as well as in anticipation of the enactment of a separate pending Compact for the Republic of Palau. Those regulations therefore provided that an otherwise eligible student qualified for Title IV, HEA assistance if he or she were a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands, or a citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

Under the terms of the Compact and subsequent agreements between the United States and the Marshall Islands and the United States and the Federated States of Micronesia, a citizen of the Marshall Islands or the Federated States of Micronesia who was enrolled in a postsecondary institution on the date preceding the effective date of the respective Compact and who is otherwise eligible qualifies for assistance under the Pell Grant, CWS, and SEOG programs for a maximum of four years from the effective date of the respective Compact. The effective dates of the Compact are, for the Marshall Islands, October 21, 1986, and for the Federated States of Micronesia, November 3, 1986. Section 668.7(a)(4) of these regulations reflects these changes. Thus, for example, a citizen of the Marshall Islands who was enrolled in a postsecondary institution on October 20, 1986, regardless of whether he or she received Title IV, HEA program assistance, may qualify for assistance under the Pell Grant, CWS, and SEOG programs if he or she meets the other eligibility requirements of the Student Assistance General Provisions and of the specific programs. This person continues to qualify for assistance under these programs at any time during the four-year period ending October 20, 1990, that he or she meets the other relevant student eligibility requirements. This person, however, does not qualify for assistance under the GSL, PLUS, SLS, Consolidation Loan, Perkins Loan, ICL, or SSIG programs unless he or she meets the requirements for eligible noncitizens. This person also does not qualify for the Byrd Scholarship Program.

Implementation of the Compact of Free Association for Palau, which would have established the Republic of Palau, has been delayed. Therefore, the Trust Territory of the Pacific Islands, of which Palau is the only remaining entity, continues to exist, and its permanent residents meet the citizenship and residency requirements of § 668.7(a)(4)(iii). However, in anticipation that the Compact may eventually be ratified, these regulations also include a provision for "citizens of the Republic of Palau."

These regulations remove the previous reference to permanent residents of the Northern Mariana Islands. On November 3, 1986, the Northern Mariana Islands became a Commonwealth of the United States, and most of its residents became United States citizens. The category of "permanent resident of the Northern Mariana Islands" no longer exists.

Satisfactory progress (§ 668.7(a)(5) and (c)). Section 668.7(a)(5) consolidates the identical satisfactory progress provisions of the student eligibility requirements contained in the individual program regulations. Under these provisions, an otherwise eligible student who is enrolled in an institution must, to maintain his or her eligibility, be maintaining satisfactory academic progress in accordance with the standards established by that institution. This section also implements new satisfactory progress provisions added to the HEA by the Higher Education Amendments of 1986. The new provisions apply only to those students who will receive Title IV, HEA program assistance for the first time beginning with the 1987–88 award year, or for the GSL, PLUS, and SLS programs, for attendance during enrollment periods beginning on or after July 1, 1987.

Under the provisions of § 668.7(c), a student must, at the end of his or her second academic year of attendance at the institution in which he or she is enrolled, have a cumulative grade point average (G.P.A.) of C or its equivalent, or have academic standing consistent with the graduation requirements established by the institution to continue to be eligible for Title IV, HEA program assistance.

In measuring academic standing consistent with its graduation requirements, an institution must consider all of its requirements governing whether a student has academic standing consistent with graduation, including requirements that the student must meet at different points in his or her educational program. Thus, for example, if a degree-granting institution using a 0.0–0.4 grade point scale requires a student who is enrolled in one of its four-year degree programs to have a 2.0 G.P.A. to receive his or her degree but allows the student to have at least a 1.75 G.P.A. at the end of two academic years, then a student with a 1.75 G.P.A. at that point has academic standing consistent with the institution's graduation requirements. The student, therefore, is considered to be maintaining satisfactory progress under § 668.7(c), even though the student does not have a cumulative "C" average.

A student who is required to meet the satisfactory progress standards of § 668.7(c) and fails to do so loses his or her eligibility for Title IV, HEA program assistance, except under the conditions discussed below. The otherwise eligible student may regain his or her eligibility if, at the end of a subsequent grading period, the student achieves academic standing consistent with the institution's graduation requirements and the institution determines that the student meets its own satisfactory progress requirements.

If a student is required to meet the satisfactory progress standards of § 668.7(c) and fails to do so, the institution may still find that the student is maintaining satisfactory progress if it determines that the student failed to meet these standards because he or she experienced an undue hardship that was caused by the death of a relative, his or

her injury or illness, or other special circumstances.

An institution is required to review the academic progress of each student who is subject to § 668.7(c) at the end of each academic year.

The satisfactory progress standards in § 668.7 of these regulations are standards that apply to determinations of *student* eligibility. In addition, an *institution* must also have satisfactory progress standards in accordance with § 668.14 of these regulations to demonstrate that it has the administrative capability to participate in Title IV, HEA programs.

Overpayment and default provisions (§ 668.7(a) (6) and (7), (d), (e), and (f)). These regulations consolidate identical provisions from the individual program regulations that condition student eligibility on the fact that a student does not owe a refund on any Pell Grant, SEOG, or SSIG (Title IV, HEA grant) nor is in default on any loan made under the ICL, National Defense/Direct Student Loan, Perkins Loan, GSL, PLUS, SLS, or consolidation Loan programs (Title IV, HEA loan). Sections 668.7(a) (6) and (a) (7) introduce one new requirement, that a student certify that he or she does not owe a refund on any Title IV, HEA grant and is not in default on any Title IV, HEA loan. This provision reduces administrative burden for institutions and reduces delays for students awaiting the disbursement of Title IV, HEA funds. Unless it receives conflicting information, an institution may rely on a student's written assurance that he or she is in compliance with these provisions when the institution follows the disbursement procedures for the Title IV, HEA programs.

Violation of loan limits (§ 668.7(a)(9)). Section 668.7(a)(9) of these regulations provides that a student may only be eligible for assistance under a Title IV, HEA program if that student's institution determines that the student has not borrowed in excess of the annual loan limits under any Title IV, HEA loan program in the academic year for which he or she has applied for that assistance, or the student has not borrowed in excess of the aggregate maximum loan limits under any Title IV, HEA loan program. These conditions are required by changes made to section 484 of the HEA by the Higher Education Amendments of 1986.

Section 668.8 Eligible program.

These regulations apply the concept of "eligible program" to all Title IV, HEA programs except the Byrd Scholarship and Consolidation Loan programs. The underlying concept of an "eligible program," which is defined currently in the regulations for the Pell Grant and campus-based programs, is that such a program leads to a degree or certificate. The changes made to section 484(a)(1) of the HEA by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987 in effect enact these regulatory eligibility requirements and apply them to all the Title IV, HEA programs except the Byrd Scholarship and Consolidation Loan programs. The new statutory provision excepts for the GSL, PLUS, and SLS programs only that category of student noted in the earlier discussion on § 668.7 (eligible student). The new statutory provision applies to eligible students who receive Title IV, HEA program assistance for the 1987–88 award year or later, or for the GSL, PLUS, and SLS programs, for periods of enrollment beginning on or after July 1, 1987.

To conform these regulations to a new provision in section 411 of the HEA, the term "eligible program," for purposes of the Pell Grant Program, is extended to include programs consisting solely of instruction in English as a second language. Under § 668.8, a student is considered to be enrolled in an eligible program, for purposes of the Pell Grant Program, if the program consists solely of instruction in English as a second language, if the program meets the other requirements for eligibility, and if the institution that offers the program determines that the program is necessary to enable the student to use already existing knowledge, training, or skills. An institution is required to document its determination.

To conform these regulations to a new provision in section 435(b) of the HEA, governing public or private nonprofit institutions of higher education under the GSL, PLUS, and SLS programs, the term "eligible program" also is extended to include a degree or certificate program of at least one year for graduates of accredited health professions programs, if that program is offered by a hospital or health-care facility. As in the case of any eligible program, that program must be offered by an eligible institution.

II. *Subpart B—Standards for Participation in Title IV, HEA Programs*

Section 668.12 Institutional participation agreement.

The Secretary has revised paragraph (b) to specify that the institution must certify in the program participation agreement that it will comply with the statutory and regulatory requirements applicable to the Title IV, HEA programs and that it has in operation a drug abuse prevention program that is accessible to any officer, employee, or student at the institution. The requirement that an institution certify that it has a drug abuse prevention program implements a change made in section 487 of the HEA by the Higher Education Amendments of 1986.

The Secretary has also revised paragraph (b) to prohibit an institution from charging any student a fee for processing or handling any application, form, or data required to determine the student's Title IV, HEA program eligibility or the Federal Student Assistance Report required under section 483(f) of the HEA. This prohibition implements a new provision contained in the HEA as amended by the Higher Education Amendments of 1986.

In response to public comment, the Secretary has revised paragraph (e) to clarify how the effective date of a new participation agreement applies to an institution in a situation involving a change in ownership or control. In that case, once the new participation agreement is executed, it is effective beginning with the date on which the ownership change occurred. However, this provision does not apply to an institution whose prior participation agreement was terminated under Subpart G of these regulations (governing fine, limitation, suspension, and termination proceedings), or if, under the Pell Grant and campus-based programs, the change in ownership did not occur in the award year in which the new participation agreement was executed.

Section 668.13 Factors of financial responsibility.

The Secretary has revised §§ 668.13(a) and 668.14(a) to make it clear that an institution must satisfy the standards set forth in each section in order to begin to participate in the Title IV, HEA programs and to continue to participate in those programs.

In the proposed regulations, the Secretary proposed to revise Subpart G, which provides procedures for the fine, limitation, suspension, and termination of institutions from the Title IV, HEA programs. In § 668.72(d) of that subpart, the Secretary proposed that if a person who owns or operates an institution pleads guilty to, or is convicted of, a crime involving the acquisition, use, or expenditure of Title IV, HEA program funds, the institution he or she owns or operates violates its fiduciary duty to administer those programs. As a result, that conviction or guilty plea is an

automatic ground for terminating the institution's eligibility to participate in the Title IV, HEA programs. The Secretary published Subpart G as final regulations in the **Federal Register** on December 1, 1986, 51 FR 43320–43329. Section 668.72 was renumbered and published as § 668.82.

The Secretary believes that the criterion proposed in § 668.72(d) and used in § 668.82(d) to determine whether an institution can act as a fiduciary of Title IV, HEA program funds applies equally to a determination of whether an institution can be viewed as financially responsible under § 668.13. Moreover, it is obviously anomalous to allow an institution that is owned or operated by an individual who was convicted of, or pled guilty to, a crime involving the Title IV, HEA programs to be considered financially responsible, and thus eligible to participate in the Title IV, HEA programs, when once declared eligible, the institution's eligibility to participate in those programs would be automatically terminated. Accordingly, the Secretary has determined that an institution, under the above circumstances, is not financially responsible and as revised § 668.13 accordingly.

The Secretary, however, believes that it may be appropriate, under certain circumstances, to allow an institution that is owned or operated by an individual who criminally obtains Title IV, HEA program funds to reestablish its eligibility. The Secretary believes that such an institution should be allowed to attempt to reestablish its eligibility after five years have elapsed from the date of the plea or conviction if the funds that were illegally acquired are repaid and the person is no longer incarcerated for that crime. The Secretary has chosen five years since that is the maximum sentence for each count of illegally obtaining Federal funds under section 490 of the HEA as well as 18 U.S.C. 1001 of the Federal Criminal Code. The Secretary has included the other conditions since the satisfaction of those conditions returns the individual and the United States, which is the victim of the crime, to the position each was in before the person engaged in the criminal act.

In order to adopt this provision, it is necessary to make a conforming change to § 668.82(d) since an institution that would be considered eligible under § 668.13(d)(2) would otherwise be terminated under § 688.82(d).

As a result of comments, the Secretary has determined that the action of acquiring Federal funds in a criminal or fraudulent manner, rather than criminally acquiring Title IV, HEA program funds, is the critical measure with regard to determining an institution's fiduciary capacity or financial responsibility. Accordingly, proposed § 668.13(c)(3) has been amended and conforming changes have been made in §§ 668.82(d) and 668.96. Those changes establish that an institution cannot be trusted to act in accordance with the highest standards of a fiduciary of public funds, nor is an institution financially responsible, if it is owned or operated by an individual, or if it employs an individual in a capacity of administering Title IV, HEA program funds, who has pled *nolo contendere* or guilty to, or was convicted of, a crime involving the acquisition, use, or expenditure of Federal funds, or who was judicially determined to have fraudulently obtained Federal funds.

In connection with a judicial determination that an individual fraudulently obtained Federal funds, the Secretary considers that a final determination made under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, constitutes a judicial determination.

The Secretary has revised §§ 668.13(e) and 668.15(b) of the final regulations to correct an error in those provisions. The NPRM stated that a financial audit of an institution must be performed in accordance with general standards contained in the U.S. General Accounting Office (GAO) publication entitled *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.* However, these GAO standards apply to audits of the Title IV, HEA programs, not to institutional audits. Therefore, the Secretary has corrected this provision to require that institutional audits be carried out in accordance with generally accepted auditing standards.

The Secretary has revised § 668.13(d)(1) of the final regulations to clarify that, in almost all cases, in order for the Secretary to determine that the institution is financially responsible, if it is not otherwise so considered under § 688.13(b) or (c)(1) through (c)(3), the institution must provide the Secretary with performance bonds or letters of credit payable to the Secretary.

Section 668.14 Standards of administrative capability.

Section 668.14(g) of the proposed regulations stated that, to be considered administratively capable, an institution must refer to State and local law enforcement agencies any instance in which it has evidence that an applicant had applied for Title IV, HEA assistance under false pretenses. Many commenters believed that the proposed requirement did not adequately explain what constitutes application under false pretenses. Other commenters were concerned that State and local law enforcement agencies may not have jurisdiction over cases involving Federal funds.

In response to these comments, the Secretary has revised § 668.14(g). The Secretary does not regard simple errors of omission or errors that might result from a misunderstanding of the program requirements as evidence that an applicant engaged in fraud or other criminal misconduct to increase his or her eligibility. The Secretary has included in this section examples of areas in which an applicant may engage in fraud or other criminal misconduct. The examples include false claims of independent student status or citizenship, the use of false identities, the forgery of official signatures or certifications, and false statements of income. For instance, if an institution becomes aware that a student is applying for Title IV, HEA assistance under a different name and social security number from those used on previous aid applications or other documents (such as the student's birth certificate, driver's license, or high school or financial aid transcript), the institution is required under § 668.14(f) to resolve this conflicting information. If in the course of resolving the conflicting information, the institution can find no legitimate reason that explains the conflict but finds that the use of a false identity increased the student's eligibility for Title IV, HEA assistance, the institution must make a referral to the appropriate investigative agency, as discussed below. Section 668.14(g) only requires the institution to refer the matter for investigation, not that it reach firm conclusions about the propriety of the student's conduct.

The Secretary does not agree with the commenters who expressed concern that State and local law enforcement agencies may not have jurisdiction over cases involving Federal funds. Fraud and other criminal misconduct are within the jurisdiction of those agencies. In cases of suspected fraud or other criminal misconduct, a financial aid administrator should first contact the institution's campus police department, if the institution has its own campus police, to determine if the campus police department has jurisdiction in the matter. In addition, legal counsel at an institution (if available) may be of assistance in deciding which State or local agency should be the recipient of a referral. If the institution does not have a campus police force, it should contact an appropriate State or local law

enforcement agency (these include a State attorney general, the State police, a State Bureau of Investigation, a sheriff, and city, county, and town police).

However, the Secretary believes that a few State or local enforcement agencies may not have jurisdiction in cases of suspected fraud or other criminal misconduct concerning applications for assistance under the Title IV, HEA programs. Some other State or local agencies might experience an additional burden by the unexpected referral of a large number of instances of possible fraud or other criminal misconduct. Therefore, the Secretary has further revised § 668.14(g) to allow an institution to refer those instances either to the Office of Inspector General of the Department of Education or, if more appropriate, to a State or local authority.

Section 668.14(f) requires, and has required since 1979, that an institution develop and apply an adequate system to identify and resolve discrepancies in information it receives from different sources with respect to a student's application for financial aid under the Title IV, HEA programs. If, as a result of the review called for under § 668.14(f), the institution discovers any information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application, it must refer that information either to a State or local law enforcement agency with jurisdiction to investigate the information or to the Office of Inspector General. In this regard, an institution should refer all cases where it finds information that indicates that the student included information on his or her application that the student knew to be false for the purpose of obtaining more Title IV, HEA assistance than he or she would otherwise be entitled to receive.

Section 668.15 Additional factors for evaluating administrative capability.

In response to public comment, the Secretary has revised paragraph (a) to include as a factor for evaluating an institution's administrative capability the default rate on loans made to students at the institution under the GSL, PLUS, SLS, or Perkins Loan programs. Under the proposed regulations, only the default rate on loans made under the Perkins Loan Program would have been treated as an indication of an institution's impaired capability to administer Title IV, HEA programs. Unlike an institution participating in the Perkins Loan Program, an institution may not necessarily be a lender under the GSL, PLUS, or SLS programs and therefore may not be directly responsible for servicing loans under those programs. However, the Secretary believes that a high default rate under the latter programs at an institution may indicate other administrative or financial problems at the institution.

Section 668.19 Financial aid transcript.

The Secretary has revised § 668.19 of the final regulations to accommodate the change made to section 484(a)(3) of the HEA by section 16032(a)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 and by section 407(a) of the Higher Education Amendments of 1986. As amended, section 484(a)(3) provides that in order for a student to be eligible to receive financial assistance under any Title IV, HEA program at any institution, the student must not be in default on *any* Title IV, HEA loan and must not owe a refund on a Title IV, HEA grant received for attendance at *any* institution. Prior to the amendment, these conditions for student eligibility referred only to attendance at the institution to which the student was applying for Title IV, HEA program funds, and not to attendance at any other institution. In keeping with the principle enunciated in the NPRM and adopted in these final regulations that a school must provide critical information regarding a student's Title IV, HEA program eligibility to a subsequent school attended by the student, these regulations require a school to indicate on the financial aid transcript whether the student is in default or owes a repayment under a Title IV, HEA program.

In keeping with this same principle, these regulations add another item to the information that an institution must include when it provides to another institution a financial aid transcript pertaining to an eligible student who attended the former institution. Under the provisions of § 668.19(c)(2), the financial aid transcript must indicate whether the student was treated as an independent student in the preceding award year. This provision is necessitated by the changes made by the Higher Education Amendments of 1986 in the definition of "independent student" contained in sections 411F and 480 of the HEA. Those changes provide that an individual may not be treated as an independent student under three of the seven categories that determine independent status if the financial aid administrator determines that the individual was treated as an independent student during the preceding award year, but was claimed as a dependent by another individual (other than a spouse) for income tax purposes for the first calendar year of that previous award year.

Under § 668.19(a) of the final regulations, an institution must determine whether a student applying for Title IV, HEA program funds has previously attended another eligible institution. Once the institution determines that the student attended another eligible institution, § 668.19(a) requires it to request from the other eligible institution a financial aid transcript for the student. Under the proposed regulations, an institution had to request a financial aid transcript only if it became aware that a student attended another eligible institution as at least a half-time student.

An institution is responsible for exercising diligence in its eligibility deteminations. A student who is in default on a Title IV, HEA loan or owes a refund on a Title IV, HEA grant is ineligible for further Title IV, HEA assistance. An institution must, therefore, make an active effort to determine whether a student previously attended another eligible institution. It may not simply fail to act because it is unaware of the student's previous educational record. The Secretary does not believe that these changes in § 668.19(a) will significantly affect most institutions, since they generally are aware of the academic background of the students that they enroll, including whether the students attended other eligible institutions. However, the changes are necessary to ensure effective implementation of the change in section 484(a)(3) of the HEA. The removal of the half-time student limitation is needed because less-than-half-time students may have previously received assistance under the CWS or SEOG programs.

In response to public comment, the Secretary has revised § 668.19(a) in the final regulations to allow an institution to certify the institutional portion of a GSL or SLS application prior to receiving the financial aid transcript from the institution previously attended by the student. However, the institution may not release GSL or SLS proceeds for the student or certify the institutional portion of a PLUS application until the institution receives the financial aid transcript.

Under § 668.19(a) of the final regulations, an institution may not, with certain exceptions, disburse, any Title IV, HEA program funds to a student until it receives the requested transcript from the institution that the student previously attended. The proposed regulations permitted an institution to

disburse Title IV, HEA program funds unconditionally for one payment period. The disbursement exceptions in the final regulations are the same as those which, under the proposed regulations, permitted an institution to disburse Title IV, HEA funds for more than one payment period: (1) If the institution that the student previously attended is not in a State, (2) if the institution has closed and the information requested is not available, or (3) if the institution indicates in writing that it is not required to provide a transcript. These changes were made because the Secretary recognizes, in the concerns expressed from commenters, the need for stricter controls to avoid disbursements of amounts for which students are ineligible.

Under § 668.19(b) of the final regulations, an institution must provide to another institution information in its possession regarding whether the student for which information was requested attended another eligible institution. The proposed regulations did not include this requirement. Also, under the proposed regulations, an institution was not required to provide a financial aid transcript to the requesting institution if the student for which the information was requested was in default on a Title IV, HEA loan or owed a refund on a Title IV, HEA grant received for attendance at the former institution. However, § 668.19(b) of the final regulations eliminates this provision. These changes conform to the principle that an institution must provide critical information on a student's Title IV, HEA program eligibility to a subsequent institution attended by the student.

Finally, under § 668.19(c)(9), a financial aid transcript must include information on whether the student for whom the transcript is requested owes an outstanding balance on either a National Direct Student Loan (Direct loan) or a National Defense Student Loan (Defense loan). This information is needed for an institution to determine the applicable benefits and responsibilities for a student seeking a loan under the Perkins Loan Program. Under the statutory changes in the Perkins Loan Program, a Perkins loan is a loan made under Title IV–E of the HEA to a student for an enrollment period beginning on or after July 1, 1987, if the student does not owe a balance on a Direct loan or a Defense loan. A Perkins Loan carries different terms and conditions from a Direct or Defense loan. For a student who does owe such a balance, the student may qualify for further Direct or Defense loans, under the terms and conditions applicable to those loans.

Section 668.22 Distribution formula for institutional refunds and for repayments of disbursements made to the student for noninstitutional costs.

A definition of "institutional refund" was added in the NPRM as paragraph (a)(2) in response to requests from the postsecondary educational community to clarify the term "refund." "Institutional refund" was defined in the NPRM as the amount paid for institutional charges by financial aid, cash payments, or both minus the amount retained by the institution for a student's actual period of enrollment. Comments received on the NPRM suggested that this definition should be revised to take into account situations in which an institution requires payment for institutional charges for an entire academic year at the beginning of the year. For example, the institution charges the students $6,000 at the beginning of the academic year ($3,000 for the first semester and $3,000 for the second semester) payable at registration. The student withdraws in the third week of the first semester after having paid the full tuition and fee charge for both semesters. Under the institution's refund policy, the student is due a 50 percent refund of the first semester charges ($1,500) and the entire amount paid for the second semester ($3,000). However, the student only received Title IV, HEA assistance to pay the institutional charges of the first payment period. The institutional charges for the second payment period were paid by the student or by non-Title IV, HEA assistance.

The Secretary agrees that it would not be reasonable to include in the refund formula the refund for a payment period other than the one in which the student withdrew. Therefore, the Secretary is limiting the "amount paid for institutional charges" and the "amount retained by the institution" to the amounts for the payment period in which the student withdrew.

Several commenters pointed out that an institution may be unable to return allocated portions of Title IV, HEA program funds to the appropriate program accounts within 30 days of the date that a student ceases enrollment if the student does not officially notify the institution. In response to these comments, the Secretary has rephrased paragraph (e)(5) to require the institution to return the funds within 30 days of the date that the student officially withdraws or is expelled or the institution determines that the student has unofficially withdrawn. The institution is responsible for maintaining a system to ensure the return of Title IV program funds in a timely manner.

Section 668.23 Audits, records, and examination.

The Secretary has revised paragraph (c)(4) to correspond to new procedures for submitting audit reports to the local regional office of the Department's Office of Inspector General. The final regulations require the submission of audit reports by March 31 following the end of the award year (which ends June 30) for those institutions that receive campus-based funds. If the institution does not receive campus-based funds, the audit reports are due by January 31 of the year following the last award year covered by the audit.

The Secretary has added a new paragraph (d) that states that the audit requirement contained in paragraph (c) is considered satisfied by an audit of the institution that is conducted in accordance with the Single Audit Act. This paragraph reflects a new provision of the HEA made by the Higher Education Amendments of 1986.

Section 668.24 Audit exceptions and repayments.

The Secretary has amended this section to correspond to new procedures contained in Subpart H of these regulations, which were published on August 12, 1987, (52 FR 30114). The Secretary has changed the number of days in which an institution must repay funds based on an audit exception from 30 days to 45 days, to correspond to the 45-day period in which an institution may request a hearing on the record under § 668.111.

Section 668.25 Loss of institutional eligibility.

The NPRM for the Student Assistance General Provisions defined the term "commitment" for the Pell Grant and campus-based programs in this section. In response to several comments, the definition of "commitment" for the GSL and PLUS programs that was given in § 668.84 of the NPRM (§ 668.94 in the final regulations) has been incorporated in this section.

III. *Subpart C—Statement of Educational Purpose and Selective Service Registration Status*

Section 668.32 Statement of Educational Purpose.

Section 668.32 has been amended to add the new statutory requirement that a student's Statement of Educational Purpose include his or her social security number, or, if the student does

not have a social security number, his or her student identification number.

Section 668.34 Model Statement of Educational Purpose and Registration Status.

The Model Statement of Educational Purpose and Registration Status has been revised to conform it to the statutory change that requires the inclusion of a student's social security number or student identification number. It also reflects the changes in the Selective Service registration requirements for persons whose citizenship or residency status was affected by the Compact of Free Association and the fact that the Northern Mariana Islands have become a Commonwealth of the United States. The category of persons who were not required to register with Selective Service because they were permanent residents of the Northern Mariana Islands has been removed from the Model Statement. A new category has been added to the Model Statement for persons who, because they are citizens of the newly created entities of the Marshall Islands and the Federated States of Micronesia, are not required to register with Selective Service. That category also anticipates the consequences of eventual implementation of the Compact of Free Association on the inhabitants of Palau, the only remaining entity of the Trust Territory of the Pacific Islands.

IV. *Subpart G—Fine, Limitation, Suspension and Termination Proceedings*

Section 668.82 Standard of conduct.

Section 668.82 has been amended to provide that an institution violates its fiduciary duty if it is owned by, employs as chief executive officer, or employs in a capacity involving the administration of Title IV, HEA programs or funds, any individual who has been convicted of, or pled guilty or *nolo contendere* to, a crime involving Federal funds, or who has been judicially determined to have committed fraud involving Federal funds. An institution also violates its fiduciary duty if it uses any individual, agency, or organization that has been, or whose officers or employees have been, criminally or fraudulently involved with Federal funds. These changes conform § 668.82 to the changes in § 668.13.

Section 668.96 Reinstatement after termination.

Paragraph (a) of this section has been amended to conform this section to the changes made in Subpart B and § 668.82(d).

Executive Order 12291

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

Assessment of Educational Impact

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

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

Paperwork Reduction Act of 1980

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs-education, Student aid.

Dated: November 24, 1987.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; College Work-Study Program, 84.033; Perkins Loan Program, 84.038; Income Contingent Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

William J. Bennett,

Secretary of Education.

Appendix—Summary of Comments and Responses

Note.—This appendix is not to be codified in the Code of Federal Regulations.

Section 668.12 Institutional participation agreement.

Comment: One commenter asked what is meant by the statement that a participation agreement becomes effective on the date executed by the Secretary. Three commenters suggested that when a participation agreement has expired, the effective date of a new participation agreement should be retroactive to the expiration date of the previous agreement, especially when there is a change in ownership. These commenters also expressed the opinion that because an institution undergoing an ownership change may not disburse Title IV, HEA funds after its agreement expires, the lack of a retroactive feature is unfair to students enrolled in that institution.

Response: A change has been made. The procedure under which an institution becomes eligible to participate in the Title IV, HEA programs is a two-step procedure. Under the first step, the Department of Education determines whether the applicant institution satisfies the applicable statutory and regulatory definitions of an eligible postsecondary institution. Under the second step, the Department determines whether the institution is administratively capable and financially responsible under §§ 668.13 and 668.14. If the Department determines that the institution qualifies under both steps, it sends the institution a participation agreement signed by the Secretary or the Secretary's designee. The institution had previously signed the agreement as part of the application process. While the date that the Secretary signs the agreement is the effective date of the agreement, as a practical matter that date only controls the disbursement of funds to students attending that institution. Thus, an institution may begin to disburse title IV, HEA program funds to its eligible students only on or after that date. However, the students may receive financial aid for the entire payment period in which the Secretary signed the participation agreement, even if the payment period began before the date of the Secretary's signature.

The circumstances surrounding the eligibility of an institution that changes ownership resulting in a change of control require special treatment. The Secretary has revised § 668.12 to clarify how the effective date of a new participation agreement applies to an institution in that situation.

The participation agreement signed by an institutions previous owner expires on the date that the change of ownership

resulting in a change in control takes place. To continue to participate in the Title IV, HEA programs, that institution must take steps to reaffirm its eligibility and its certification in order to be considered the same institution after the change. If the institution under its new ownership satisfies the Secretary regarding its eligibility to participate in the Title IV, HEA programs, the Secretary enters into a new participation agreement with the new owners of the institution.

When a new participation agreement is signed by the Secretary, the new owner may begin disbursing Title IV, HEA program funds. Since the Secretary considers that institution to be the same institution, the new owner ordinarily may disburse funds to students who were enrolled beginning with the payment period in which the change of ownership took place, even if that payment period ended before the Secretary signed the new agreement.

There is one exception to this disbursement procedure under the Pell Grant and campus-based programs, however. If the change of ownership that results in a change in control occurs in one award year and the Secretary signs the new participation agreement in another award year, the new owner may not make Pell Grant and campus-based disbursements for any payment period that does not occur at least partially in the award year in which the Secretary signs the agreement.

If a new institution is created by separating a part of an existing participating institution, but the new institution remains under the same ownership as the existing participating institution, students at the new institution may continue to receive financial aid under the participation agreement with the existing participating institution until the new institution enters into its own participation agreement with the Secretary. If, however, the new institution changes its ownership resulting in a change in control when it separates from the existing participating institution, the existing participation agreement ceases to apply to the new institution on the date that the ownership change takes place. The conditions that apply to other institutions undergoing ownership changes also apply to this new institution. This retroactive payment feature does not apply to an institution under new ownership if the institution's participation under its previous owner was terminated by the Secretary under the provisions of Subpart G of these regulations, since an institution so terminated may not reapply to participate in the Title IV, HEA programs for 18 months. The new owner of such an institution may only disburse funds for payment periods beginning with the payment period in which the new participation agreement is signed by the Secretary.

Section 668.14 Standards of administrative capability.

Comment: Many commenters felt that the proposal in the NPRM that institutions refer any instance of suspected fraud by a Title IV, HEA applicant to State or local law enforcement agencies for investigation was unclear. Several commenters were unsure what constituted application for aid under "false pretenses."

Response: A change has been made. Based on the concerns of the postsecondary educational community, including numerous comments received regarding a cross-reference to this requirement contained in the NPRM for Subpart E of the Student Assistance General Provisions published in the **Federal Register** on July 26, 1985, 50 FR 30674, the Secretary has clarified this requirement. Section 668.14(f) requires, and has required since 1979, that an institution develop and apply an adequate system to identify and resolve discrepancies in information it receives from different sources with respect to a student's application for financial aid under the Title IV, HEA programs. If, as a result of the review called for under § 668.14(f), the institution discovers any information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application, it must refer that information either to the Office of Inspector General of the Department of Education or, if more appropriate, to a State or local law enforcement agency with jurisdiction to investigate the information. In this regard, an institution should refer all cases where it finds information that indicates that the student included information on his or her application that the student knew to be false for the purpose of obtaining more Title IV, HEA assistance than he or she would otherwise be entitled to receive. The Secretary has also included in these regulations several examples of possible areas in which an applicant may engage in fraud or other criminal misconduct: False claims of independent student status or citizenship, the use of false identities, the forgery of signatures or certifications, and false statements of income.

Comment: Several commenters stated that it would be impossible to define the circumstances under which the institution has clear evidence that an applicant's intent in reporting false information was fraudulent. For this reason, these commenters recommended that the requirement that institutions report instances of suspected fraud to law enforcement agencies be deleted.

Response: No change has been made. The Secretary recognizes that applicants often misreport information without having any intent to deceive. However, there are identifiable circumstances in which the institution would have reason to believe that an applicant has deliberately misreported information to increase his or her eligibility for Title IV, HEA assistance. For instance, when an applicant uses a false identity to apply for assistance or alters official documents such as transcripts or the Student Aid Report, the institution would have reason to believe that these actions were intentional. The institution is not required to reach a firm conclusion as to the propriety of the applicant's actions but is required to refer the matter to the appropriate law enforcement agency or the Inspector General for investigation.

Comment: Many commenters noted that the NPRM did not specify the types of law enforcement agencies to which a referral should be made and questions whether State or local agencies were even aware of their possible involvement in and responsibility for those investigations. Several commenters suggested that the investigation of fraudulent applications for Federal student aid should properly be the concern of Federal enforcement agencies.

Response: A change has been made. Because of the different structure and responsibilities of law enforcement agencies within each State, it is not possible to specify any one type of organization to which referrals must be made in all States. Many institutions have an independent campus police force that is authorized to conduct investigations concerning the misuse of Federal funds. At the local level, the county police department or sheriff's office generally has jurisdiction in the case of misuse of Federal funds. In keeping with its responsibility to establish and coordinate relations with State and local law enforcement agencies, the Office of Inspector General for the Department of Education has conducted numerous training programs for State and local law enforcement officers on the Federal student financial assistance programs. However, in light of the differences among law enforcement agencies at the State and

local level, the Secretary recognizes that there may be some cases in which no State or local agency has jurisdiction. The Secretary also recognizes that some State or local agencies might experience an additional burden by the unexpected referral of a large number of instances of possible fraud or other criminal misconduct. Therefore, the Secretary has revised the section to permit an institution to make a referral either to the Office of Inspector General of the Department of Education or, if more appropriate, to State or local authorities.

Comment: Several commenters were concerned that an additional administrative burden would be placed upon institutions by the requirement that institutions must refer instances of fraudulent applications for Title IV, HEA aid. The commenters cited increased paperwork and litigation cost to the institutions.

Response: No change has been made. The Secretary believes that the administrative burden associated with this requirement will be minimal. Institutions are required to identify and resolve instances in which there are discrepancies in information received from various sources. Institutions are not required to investigate or litigate cases of suspected fraud. Institutions are merely required to refer instances when their actions under § 668.14(f) reveal possible fraud or criminal misconduct. There should be relatively few of these instances at any single institution.

Comment: Several commenters were concerned that referring student information to law enforcement agencies would deny the applicant due process. Three commenters believed that under this provision students would receive unequal treatment based on the personal views of the financial aid administrator. Two commenters believed that referral of student information conflicted with the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, 34 CFR Part 99.

Response: No change has been made. A school's referral of instances of suspected fraud to law enforcement agencies or the Office of Inspector General does not deny the student due process. Section 99.31 of the Department of Education's FERPA regulations specifically authorizes the release of student information as necessary "to enforce the terms and conditions of student aid." In addition, an institution is authorized to release information to the Secretary for audit, evaluation, and enforcement of Federal legal requirements that apply to federally supported programs (see 34 CFR 99.31(a)(3) and (4); 99.35).

Comment: Many commenters were concerned with the requirement in § 668.14(c) that an institution must use an adequate number of qualified persons to administer the Title IV, HEA programs. Many commenters asked if the Secretary used a formula to determine what is an adequate number of qualified persons. One commenter stated that due to the diversity of institutions it would be impossible for the Secretary to make a determination.

Response: No change has been made. The Secretary does not use a formula in making this determination. What may be an adequate number of qualified persons to administer the Title IV, HEA programs at one institution may be insufficient at another. For instance, the number of individuals required at an institution to ensure proper and prudent administration of the student assistance programs will vary depending upon such factors as the amount of aid disbursed, the number of recipients, and the use of automated data processing equipment or a centralized award and disbursement system.

Comment: Several commenters argued that an institution should only have to evaluate academic periods during which a student received Title IV, HEA aid when determining if the student is making satisfactory progress in his or her course of study for purposes of § 668.14(e).

Response: No change has been made. The purpose of the satisfactory progress rule is to ensure that limited Title IV, HEA program funds are given to students who are likely to complete their educational programs in a timely manner. Whether a student received aid during an academic period is irrelevant to that determination.

Section 668.15 Additional factors for evaluating administrative capability.

Comment: Several commenters disagreed with the proposed elimination of GSL and PLUS program default rates as indicators of an institution's administrative capability. They were of the opinion that postsecondary institutions may be indirectly responsible for default rates and should be required to assist lenders and State agencies in collection efforts. Other commenters were pleased with the proposal because they felt that GSL and PLUS program default rates are not related to an institution's administrative capability.

Response: A change has been made. The Secretary recognizes that an institution does not have the responsibility (unless it is also the lender) for collecting GSL, PLUS, and SLS program loans received for attendance at an institution and thus lacks direct responsibility for and control over that aspect of loan administration. However, under the changes made to the HEA by the Higher Education Amendments of 1986, an institution, even if it is not a lender, is required to provide to each borrower exit counseling concerning indebtedness and debt management strategies. Further, a high default rate on loans made under the GSL, PLUS, and SLS programs may indicate other problems at an institution. Therefore, the Secretary has included default rates on loans made under those programs as indicators of an institution's impaired administrative capability.

Comment: A few commenters questioned the relationship between an institution's student withdrawal rate and its capability to administer Title IV, HEA programs. The same commenters questioned the rationale for using 33 percent as a benchmark figure to indicate possible impaired capability of administering Title IV, HEA program funds by an institution if this percentage of students withdrew during an eight-month period. One commenter asked what the submission of a balance sheet, financial audit, or profit and loss statement might have to do with student withdrawal rates and rates of default.

Response: A change has been made. Simply because an institution fits into one of the categories in this section does not automatically mean that adverse action will be taken against the institution. However, the Secretary believes that a high withdrawal rate at the institution or a high default rate for loans made under the GSL, PLUS, SLS, or Perkins Loan programs may be symptomatic of other administrative and financial problems at the institution that would be reflected in the institution's balance sheet, profit and loss statement, or financial audit. In addition, those rates may justify requiring the institution to take reasonable and appropriate measures to reduce those rates. The documents requested by the Secretary will enable the Secretary to determine the best available measures to take to reduce those rates.

The Secretary will allow an institution every opportunity to describe and justify the reasons for its high withdrawal rate or high default rate. The Secretary chose a benchmark withdrawal rate of 33 percent after extensive public comment on the Student Assistance General Provisions regulations published in the **Federal Register** on September 28, 1979 (see 44 FR 56278). The Secretary believes that a withdrawal rate of 33 percent or greater is an indication of

possible administrative or financial problems at the institution that may cast doubt on the institution's administrative capability.

Section 668.16 Federal interest in Title IV, HEA program funds.

Comment: One commenter was concerned that the language in this section, which states that an institution may not use or hypothecate Title IV, HEA program funds for any purpose other than for the intended student beneficiaries, excludes the investment of cash from the Perkins Loan fund which would increase the fund account.

Response: A change has been made. The prohibition against using or hypothecating Title IV, HEA program funds does not preclude the institution from investing cash from its Perkins Loan fund. Institutions are reminded that all earnings on such investments must be deposited into their Perkins Loan Program revolving funds (see sections 463(a)(2)(E) and 487(a)(1) of the HEA). However, the Secretary has revised this section to indicate that the institution acts in the capacity of a fiduciary of Federal funds to protect the interest of the Secretary as well as the intended student beneficiaries in those funds.

Section 668.17 Change in ownership resulting in a change in control.

Comment: Two commenters asked what constitutes a "controlling interest" in an institution. One commenter noted the elimination of the reference to the transfer of the liabilities of an institution to its parent corporation and asked whether such a transfer no longer constitutes a change in ownership. One commenter thought that a definition of "change of ownership" should be included in this section.

Response: No change has been made. In most cases, a controlling interest in an institution means an interest greater than 50 percent of ownership. The Secretary no longer considers the transfer of liabilities of an institution to its parent corporation to be a change in ownership that results in a change in control, hence the deletion from the regulations. The Secretary does not believe that a definition of the term "change of ownership" is needed in the regulations. Further, this section will be deleted from this part when the institutional eligibility regulations, 34 CFR Part 600, are published as final regulations.

Section 668.19 Financial aid transcript.

Comment: Over one hundred commenters were opposed to the change in the regulations that would prohibit institutions from certifying the institutional portion of a borrower's application under the GSL or PLUS programs until the institution receives the requested financial aid transcript. Many of these commenters stated that this proposal expands the time during which a borrower waits for his or her aid. They said that the additional delay would impose a burden on financial aid officers and a particular hardship on students enrolled in community colleges and proprietary institutions, where transfers are frequent and enrollment periods shorter than at traditional four-year institutions. Several commenters claimed that that delay might be as long as 4 to 6 weeks.

Several commenters suggested alternatives to this proposal. One alternative included allowing an institution to certify one GSL or PLUS application and deliver the first disbursement to the borrower, but not permitting an institution to deliver subsequent disbursements to the borrower without the financial aid transcript. Another alternative included (1) requiring all GSL and PLUS checks either to be sent to the educational institution for distribution or to be made jointly payable to the borrower and the institution and (2) making the release of the checks contingent on receipt of the financial aid transcript. Another commenter suggested that an institution should return the check to the lender if a financial aid transcript has not been received in a timely manner. Several commenters supported the proposed changes in principle.

Response: A change has been made. The Secretary agrees that withholding certification of a GSL, PLUS, or SLS application may delay the processing of the application. Therefore, the Secretary has revised § 668.19 to permit an institution to certify a GSL or SLS application (but not a PLUS application) prior to receiving the financial aid transcript from the institution the borrower previously attended. However, the institution may not release the GSL or SLS proceeds until it receives the financial aid transcript. Under the requirements of the HEA as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Higher Education Amendments of 1986, these proceeds are delivered directly to the institution, but PLUS proceeds go directly to the borrower. Therefore, since the institution has no control over the release of PLUS proceeds, the Secretary is retaining the requirement that the institution may not certify a PLUS application until it receives the financial aid transcript.

Comment: Several commenters felt that it would be impossible for institutions to provide accurate information on the financial aid transcript as to the amount of and period covered by each GSL or PLUS program loan received by a borrower. The commenters suggested rewording this section to read "approved" instead of "received" since financial aid officers only know the amount authorized and amount approved by the lender but not the actual amount received by the student.

Response: No change has been made. These comments were received before enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Higher Education Amendments of 1986, which require that except in the case of loans made to parent borrowers under the PLUS Program, proceeds must be sent to the institution. Therefore, in most cases an institution will be able to report the exact amount that a borrower received for any period after the implementation of the statutory change. The Secretary is aware that for periods before implementation of the statutory change, an institution may not know the exact amount received by a borrower unless the institution is the lender. If the institution did not receive the proceeds, the amount that the institution must report on the financial aid transcript is the loan amount that the institution certified.

Comment: Several commenters were of the opinion that requiring a financial aid transcript to be signed by an official authorized by the institution to disclose information in connection with Title IV, HEA programs is too restrictive. One commenter asked whether this requirement excluded the use of automated methods.

Response: No change has been made. The Secretary does not intend to limit the use of automated methods for preparing financial aid transcripts. However, if a computer-generated transcript is used, it must have the signature of someone who is knowledgeable about the information reported and authorized to disclose that information. It is important that the information provided be accurate and that the person attesting to the accuracy of the information be a reliable and responsible officer of the institution.

Comment: Several commenters asked whether the reference to "State" in § 668.19(a)(2)(iii) of the proposed regulations refers to a State of the Union, a State in which the institution is located, or a foreign country for foreign institutions. One commenter asked

whether this term includes Washington, DC.

Response: No change has been made. The definition of the term "State" appears in § 668.2 (General definitions). The exclusion, therefore, refers to eligible institutions located in foreign countries.

Comment: A number of commenters stated that the wording in § 668.19(a)(2) of the proposed regulations suggests that an institution may make one payment regardless of whether a transcript has been requested.

Response: A change has been made. The Secretary agrees that clarification is needed. An institution or student must request a financial aid transcript before the one payment is disbursed in accordance with the regulations.

Section 668.20 Limitation on the amount of remedial coursework that is eligible for Title IV, HEA program assistance.

Comment: Many commenters requested an exception to the one-year restriction on noncredit remedial work in determining enrollment status for students receiving a Pell Grant. They claimed that it would be difficult for an institution to monitor when a student had completed an academic year of remedial work. A few commenters contended that this restriction would disproportionately affect low-income and nontraditional students who are the very students the Pell Grant Program is designed to help. Many of these commenters felt that any limits on remedial work should be determined by the institution. Other commenters suggested that an institution's satisfactory progress standards should form the basis for any limitation on remedial work. Some commenters thought that the Secretary does not have the statutory authority to limit Pell Grant payments for remedial work.

Response: No change has been made. The purpose of Title IV, HEA programs is to assist students who are enrolled in postsecondary education. The Secretary is not excluding remedial courses from eligibility but rather is setting a limit on the duration of remedial coursework that can reasonably be viewed as a part of a postsecondary program of study. The Secretary does not consider a student who enrolls in the equivalent of more than one year of remedial work to be enrolled in postsecondary education.

Comment: A few commenters asked if the equivalent of a year of remedial work has to be completed within one academic year or if it could be taken over several academic years within the program of study.

Response: No change has been made. The hours that equal one academic year do not have to be taken within a single academic year. Based on individual needs, a student could spread the academic year of work (30 semester hours, 45 quarter hours, or 900 clock hours) throughout his or her program of study, if permitted by the institution.

Comment: One commenter disagreed with the exception to the one-year limit for students enrolled in courses in English as a second language.

Response: No change has been made. Although students enrolled in courses in English as a second language are exempt from the one-year limitation, these students are still subject to the one-year limitation for any other courses that are remedial in nature. The Secretary believes that these students usually have the knowledge and skills of high school graduates but need to learn a second language as part of their postsecondary program.

Section 668.22 Distribution formula for institutional refunds and for repayments of disbursements made to the student for noninstitutional costs.

Comment: Many commenters felt that, for the most part, § 668.22 of the proposed regulations clarified the difference between refunds and repayments. However, many commenters were confused on how the concept of a "payment period" would be applied to GSL and PLUS program loans. Several commenters, writing before enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, expressed concern over the fact that a typical GSL or PLUS program loan was disbursed in a single payment that covered expenses for the entire period of enrollment.

Response: No change has been made. The calculation of the refund distribution formula in § 668.22 is based on the concept of "payment period" as that term is used in most of the Title IV, HEA programs. In the context of the GSL, PLUS, and SLS programs, however, that concept is different, and it generally refers to the period of enrollment for which a loan is made. For consistency in the application of the formula, therefore, an institution is to consider that enrollment period to be divided into portions that correspond to the payment periods used for the other Title IV, HEA programs.

For purposes of the refund distribution fraction, the amount of the GSL, PLUS, or SLS proceeds considered to be awarded for a payment period is determined by dividing the whole loan amount by the number of institutionally defined payment periods in the period of enrollment for which the loan is made. For example, if the enrollment period for which the GSL, PLUS, or SLS program loan is made equals three academic quarters and the student was awarded a GSL of $1,500, one-third of the total loan, *i.e.*, $500, is considered to have been awarded for each payment period.

It should be noted that the changes in the HEA made by the Consolidated Omnibus Budget Reconciliation Act of 1985, the Higher Education Amendments of 1986, and the Higher Education Technical Amendments Act of 1987, which were enacted after these comments were received, require multiple disbursements for GSL, PLUS, or SLS proceeds for periods of instruction greater than six months if the loan amount is $1,000 or more. However, for a student who is awarded a multiple disbursement loan, the amount of the loan proceeds actually disbursed is not necessarily the same as the amount that is considered to have been disbursed in each payment period. For example, an institution uses an academic calendar divided into quarters and the enrollment period for which a loan is made consists of three quarters. A student receives a $1,500 GSL in two disbursements of $750 each. However, for purposes of the refund formula, the student is considered to have received a disbursement of $500 in each of the three quarters (payment periods).

Comment: Several commenters suggested that simplicity and consistency in the refund concept for all Title IV, HEA programs, could be enhanced by changing the word "awarded," which is used in the numerator and denominator of the formula, to "disbursed."

Response: No change has been made. During the development of the refund formula that first appeared in the Student Assistance General Provisions regulations in 1979, the Secretary determined that it would be easier for an institution to use the term "amount awarded" in the refund and repayment formula. The institution may not know the amount the student has actually received, particularly in the case of a PLUS Program loan or other assistance provided by organizations outside the institution.

Comment: Many commenters agreed that in refund cases, Title IV, HEA program funds should be returned to respective accounts in a timely manner, but stated that 30 days was an insufficient amount of time for doing so.

Response: A change has been made. In an effort to reduce potential abuse of Title IV, HEA program funds and allow for prompt reawarding of returned

SEOG and Perkins Loan funds, the Secretary is keeping the 30-day repayment rule. However, the Secretary has revised the regulations so that the 30-day repayment period for unofficial withdrawals will not commence until an institution determines that a student has withdrawn. An institution must have a method for promptly determining when a student has unofficially withdrawn, because the institution is responsible for maintaining a system to ensure the timely return of Title IV, HEA program funds.

Comment: Four commenters stated that § 668.22(a)(3) of the proposed regulations is ambiguous in referring to "institutions which do not receive funds under the Alternate Disbursement System (ADS)" rather than simply stating that the procedure applies to institutions using the Regular Disbursement System.

Response: A change has been made. The Alternate Disbursement System ceased operation after the 1986–87 award year. Therefore, references to both the Alternate Disbursement System and the Regular Disbursement System have been removed from the regulations.

Section 668.24—Audit exceptions and repayments.

Comment: Several commenters questioned the reasoning behind the proposed change from 60 to 30 days on the time allowed for audit exception repayments.

Response: A change has been made. In the proposed regulations, the time in which an institution must repay improperly spent funds would have changed from 60 days to 30 days to conform to the instructions in the revised Office of Management and Budget (OMB) Circular A–50 issued on September 29, 1982. In these final regulations, the Secretary has changed that number of days from 30 to 45. This change corresponds to the change in the HEA made by the Higher Education Amendments of 1986, which allows an institution to request a hearing on the record regarding an audit exception within 45 days.

Section 668.25—Loss of institutional eligibility.

Comment: Several commenters wanted a definition of "commitment" for the GSL and PLUS programs, such as the one in § 668.94(c)(2) of Subpart G (originally published as § 668.84(c)(2) of the proposed regulations). These commenters recommended that language be included in this section to prohibit an institution from certifying a student's eligibility on a GSL or PLUS application during the loss of institutional eligibility.

Response: A change has been made. The Secretary agrees with the commenters that a definition of "commitment" under the GSL, PLUS, and SLS programs is needed in this section for clarity. Language similar to that in § 668.94(c)(2) of Subpart G has therefore been added to § 668.25(b). The revised § 668.25(b) provides that a commitment under the GSL, PLUS, or SLS programs takes place when the Secretary or the guarantee agency advises the lender that a loan is guaranteed. Section 682.603 of the regulations implementing the GSL Program permits an institution to distribute proceeds to a student, pursuant to 34 CFR 682.604, if the GSL, PLUS, or SLS application was certified by the institution prior to the institution's loss of eligibility. The regulations implementing the GSL Program prohibit an institution from certifying an application after the loss of eligibility.

The Secretary amends Parts 668 and 690 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Subpart A of the Table of Contents of Part 668 is amended by revising § 668.7 and adding § 668.8 to read as follows:

Subpart A—General

* * * * *

668.7 Eligible student.
668.8 Eligible program.

* * * * *

3. Subpart B of the Table of Contents of Part 668 is revised to read as follows:

Subpart B—Standards for Participation in Title IV, HEA Programs

Sec.
668.11 Scope.
668.12 Institutional participation agreement.
668.13 Factors of financial responsibility.
668.14 Standards of administrative capability.
668.15 Additional factors for evaluating administrative capability.
668.16 Federal interest in Title IV, HEA program funds.
668.17 Change in ownership resulting in a change in control.
668.18 Written agreements between an eligible institution and an ineligible entity.
668.19 Financial aid transcript.
668.20 Limitation on the amount of remedial coursework that is eligible for Title IV, HEA program assistance.
668.21 Treatment of Pell Grant, SEOG, ICL, and Perkins Loan program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.
668.22 Distribution formula for institutional refunds and for repayments of disbursements made to the student for noninstitutional costs.
668.23 Audits, records, and examination.
668.24 Audit exceptions and repayments.
668.25 Loss of institutional eligibility.

4. Section 668.1 is revised to read as follows:

§ 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program).

(b) As used in this part, an "institution" includes—

(1) A public or private nonprofit institution of higher education as defined in § 668.3;

(2) A proprietary institution of higher education as defined in § 668.4;

(3) A postsecondary vocational institution as defined in § 668.5; and

(4) A vocational school as defined in § 668.6.

(c) The Title IV, HEA programs include—

(1) The Pell Grant Program (20 U.S.C. 1070a *et seq.*; 34 CFR Part 690);

(2) The Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070b *et seq.*; 34 CFR Part 676);

(3) The State Student Incentive Grant (SSIG) Program (20 U.S.C. 1070c *et seq.*; 34 CFR Part 692);4

(4) The Robert C. Byrd Honors Scholarship (Byrd Scholarship) Program (20 U.S.C. 1070d–31 *et seq.*; 34 CFR Part 654);

(5) The Guaranteed Student Loan (GSL) Program (20 U.S.C. 1071 *et seq.*; 34 CFR Part 682);

(6) The Supplemental Loans for Students (SLS) Program (20 U.S.C. 1078–1; 34 CFR Part 682);

(7) The PLUS Program (20 U.S.C. 1078–2; 34 CFR Part 682);

(8) The Consolidation Loan Program (20 U.S.C. 1078–3; 34 CFR Part 682);

(9) The College Work-Study (CWS) Program (42 U.S.C. 2751 *et seq.*; 34 CFR Part 675);

(10) The Income Contingent Loan (ICL) Program (20 U.S.C. 1087aa *et seq.*; 34 CFR Part 673); and

(11) The Perkins Loan Program (20 U.S.C. 1087a *et seq.*; 34 CFR Part 674).

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

5. Section 668.2 is amended by adding, in alphabetical order, the definitions of

Consolidation Loan Program, Income Contingent Loan (ICL) Program; Independent student, Perkins loan, Perkins Loan Program, Robert C. Byrd Honors Scholarship (Byrd Scholarship) Program, Supplemental Loans for Students (SLS) Program, and by revising paragraph (a) of the definition of *Campus-based programs* and the definitions of *Dependent student, Direct loan, National Direct Student Loan (NDSL) Program, Regular student,* and *State* to read as follows:

§ 668.2 General definitions.

* * * * *

Campus-based programs: (a) The Perkins Loan Program (34 CFR Part 674);

* * * * *

Consolidation Loan Program: The loan program authorized by Title IV–B of the HEA.

(Authority: 20 U.S.C. 1078–3)

* * * * *

Dependent student: Any student who does not qualify as an independent student (see independent student).

Direct loan: A loan made under Title IV–E of the HEA after June 30, 1972, which does not satisfy the definition of "Perkins loan."

(Authority: 20 U.S.C. 1087aa *et seq.*)

* * * * *

Income Contingent Loan (ICL) Program: The student loan program authorized by Title IV–D of the HEA.

(Authority: 20 U.S.C. 1087a *et seq.*)

Independent student: A student who qualifies as an independent student under section 411F(12) of the HEA for the Pell Grant Program and section 480(d) of the HEA for all the other Title IV, HEA programs.

(Authority: 20 U.S.C. 1070a–6; 20 U.S.C. 1087vv)

* * * * *

National Direct Student Loan (NDSL) Program: The student loan program authorized by Title VI–E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa–1087ii)

* * * * *

Perkins loan: A loan made under Title IV–E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV–E of the HEA.

(Authority: 20 U.S.C. 1087aa *et seq.*)

Perkins Loan Program: The student loan program authorized by Title IV–E of the HEA after October 16, 1986.

(Authority: 20 U.S.C. 1087aa–1087ii)

* * * * *

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

Robert C. Byrd Honors Scholarship (Byrd Scholarship) Program: The scholarship program authorized by Title IV–A–6 of the HEA.

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

* * * * *

State: Each State of the Union, the Commonwealth of Puerto Rico, the District of Columbia, and, except for the Byrd Scholarship Program, American Samoa, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Authority: 20 U.S.C. 1141(b); 20 U.S.C. 1088(a); 20 U.S.C. 1070d–32)

* * * * *

Supplemental Loans for Students (SLS) Program: The loan program authorized by Title IV–B of the HEA and formerly called the ALAS Program.

(Authority: 20 U.S.C. 1078–1)

* * * * *

6. Section 668.7 is revised to read as follows:

§ 668.7 Eligible student.

(a) *Eligibility.* A student is eligible to receive assistance under the Pell Grant, SEOG, SSIG, GSL, PLUS, SLS, CWS, ICL, and Perkins Loan programs if the student—

(1) Is—

(i) A regular student enrolled or accepted for enrollment in an eligible program; or

(ii) For purposes of the GSL, PLUS, or SLS programs, enrolled as at least a half-time student in a course of study necessary for enrollment in an eligible program for no longer than one twelve-month period;

(2) Is not enrolled in either an elementary or secondary school;

(3)(i) Has a high school diploma or its recognized equivalent;

(ii) If enrolled at a public or private nonprofit institution of higher education—

(A) Is above the age of compulsory school attendance in the State in which the institution he or she is attending is located; and

(B) Except for the GSL, PLUS, or SLS programs, has the ability to benefit from the education or training offered by that institution, according to the requirements of paragraph (b) of this section;

(iii) If enrolled at a proprietary institution of higher education or postsecondary vocational institution—

(A) Is above the age of compulsory school attendance in the State in which the institution he or she is attending is located; and

(B) Has the ability to benefit from the training offered by that institution, according to the requirements of paragraph (b) of this section; or

(iv) If enrolled at a vocational school, has the ability to benefit from the training offered, according to the requirements of paragraph (b) of this section;

(4)(i) Is a U.S. citizen or national;

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

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

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

(iii) Is a permanent resident of the Trust Territory of the Pacific Islands; or

(iv) For purposes of the Pell Grant, SEOG, and CWS programs—

(A) Is a citizen of the Federated States of Micronesia who was enrolled in an institution on November 2, 1986;

(B) Is a citizen of the Marshall Islands who was enrolled in an institution on October 20, 1986; or

(C) Is a citizen of the Republic of Palau who was enrolled in an institution on the day preceding the effective date of the Compact of Free Association;

(5) If currently enrolled, is maintaining satisfactory progress in his or her course of study according to the institution's standards of satisfactory progress and, if applicable, the requirements of paragraph (c) of this section;

(6) Except as provided in paragraph (d) of this section, does not owe, and certifies that he or she does not owe, a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs. A student owes a refund on a grant if the student receives a grant overpayment. A student receives a grant overpayment if the student's grant payments exceed the amount he or she is eligible to receive or use;

(7) Except as provided in paragraph (e) of this section, is not in default, and certifies that he or she is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, GSL, PLUS, SLS, or Consolidation Loan programs;

(8) Has filed a Statement of Educational Purpose and Selective Service Registration Status in

accordance with the requirements of Subpart C;

(9) As determined by the institution that he or she attends, has not borrowed—

(i) In excess of the annual loan limits under the ICL, GSL, PLUS, or SLS programs in the same academic year for which he or she has applied for assistance under any Title IV, HEA program; and

(ii) In excess of the aggregate maximum loan limits under the ICL, Perkins Loan, GSL, PLUS, SLS, or Consolidation Loan programs;

(10) Has financial need, if applicable, in accordance with the requirements of the Title IV, HEA program under which he or she has applied for assistance; and

(11) Meets the requirements of—

(i) For purposes of the ICL Program, 34 CFR 673.22;

(ii) For purposes of the Perkins Loan Program, 34 CFR 674.9;

(iii) For purposes of the CWS Program, 34 CFR 675.9;

(iv) For purposes of the SEOG Program, 34 CFR 676.9;

(v) For purposes of the GSL, PLUS, or SLS programs, 34 CFR 682.201;

(vi) For purposes of the Pell Grant Program, 34 CFR 690.75; or

(vii) For purposes of the SSIG Program, 34 CFR 692.40.

(b) *Ability to benefit.* A student who is admitted to an institution as a regular student on the basis of that student's ability to benefit from the institution's education or training program remains eligible for any assistance under a Title IV, HEA program only if the student—

(1) Before admission—

(i) Is administered a nationally recognized, standardized, or industry-developed test, subject to criteria developed by the institution's nationally recognized accrediting agency or association, that measures the student's aptitude to complete successfully the educational program to which he or she has applied; and

(ii) Demonstrates that aptitude on that test;

(2) Receives a GED before the earlier of—

(i) The student's certification or graduation from his or her program of study; or

(ii) The completion of the student's first academic year of that program of study; or

(3) Enrolls in and successfully completes a remedial or developmental educational program of not more than one academic year that is prescribed by the institution, if the student—

(i) Is counseled before admission; or

(ii) Does not demonstrate the aptitude necessary to complete successfully the educational program to which he or she has applied on the test described in paragraph (b)(1) of this section.

(c) *Satisfactory progress.* In order for a student who has not received assistance under any Title IV, HEA program during an award year beginning before July 1, 1987, or for the GSL, PLUS, and SLS programs a period of enrollment beginning before July 1, 1987, to be eligible to receive assistance under any of those programs, an institution shall—

(1) Review the student's academic progress at the end of each academic year;

(2) Determine that the student is making satisfactory academic progress at the end of that student's second academic year of attendance at the institution on the basis of a finding that—

(i) The student has at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements; or

(ii) The student's failure to have at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements, was caused by—

(A) The death of a relative of the student;

(B) An injury or illness of the student; or

(C) Other special circumstances; and

(3) Determine, in the case of a student who was not making satisfactory academic progress in accordance with paragraph (c)(2) of this section at the end of that student's second academic year of attendance at the institution, that the student is making satisfactory academic progress if that student subsequently obtains academic standing consistent with the institution's requirements for graduation at the end of a grading period.

(d) *Refund of a grant or scholarship overpayment.* Notwithstanding paragraph (a)(6) of this section, a student who owes a refund on a Pell Grant, SEOG, or SSIG due to an overpayment is eligible to receive assistance under a Title IV, HEA program under the following conditions:

(1) *Pell Grant overpayment.*

(i) If an institution makes a Pell Grant overpayment to a student, that student is eligible to receive assistance under a Title IV, HEA program if—

(A) The Student is otherwise eligible; and

(B) The institution can eliminate the overpayment in the award year in which it occurred by adjusting subsequent Pell Grant payments for that award year.

(ii) If an institution makes a Pell Grant overpayment to a student as a result of its own error and cannot eliminate the overpayment under paragraph (d)(1)(i)(B) of this section, the student is eligible to receive assistance under a Title IV, HEA program if the student—

(A) Is otherwise eligible; and

(B) Acknowledges the overpayment and agrees, in writing, to repay it within six months.

(2) *SEOG or SSIG overpayment.* If an institution makes an SEOG or SSIG overpayment to a student, that student is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

(e) *Default on a loan.* Notwithstanding paragraph (a)(7) of this section, a student who is in default on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, GSL, PLUS, SLS, or Consolidation Loan programs is eligible to receive assistance under a Title IV, HEA program under the following conditions

(1) *GSL, PLUS, SLS, or Consolidation Loan programs.* A student who is in default on a loan made under the GSL, PLUS, SLS, or Consolidation Loan programs is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

(ii) The Secretary, for a federally insured loan, or a guarantee agency, for a loan insured by that guarantee agency, determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *Defense/Direct Loan, Perkins Loan, and Income Contingent Loan programs.* A student who is in default on a loan made under the National Defense/Direct Student Loan, Perkins Loan, or Income Contingent Loan programs is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

(ii) The institution that made the loan or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan.

(f) *Bankruptcy.* The Secretary does not consider a loan made under the ICL, National Defense/Direct Student Loan, Perkins Loan, Guaranteed Student Loan,

PLUS, SLS, or Consolidation Loan progams that is discharged in bankruptcy to be in default for purposes of this section.

(Authority: 20 U.S.C. 1070a–1070c–1, 1077, 1078, 078–1–3, 1082, 1085, 1087a, 1087cc, and 1091; 42 U.S.C. 2753)

7. Section 668.8 is added to read as follows:

§ 668.8 Eligible program.

(a) *General.* An eligible program is a program of education or training that—

(1) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma;

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and, except for the GSL, PLUS, or SLS programs, have the ability to benefit from the education or training offered; or

(iv) For a program at a vocational school, have completed or left elementary or secondary school and have the ability to benefit from the education or training offered;

(2)(i) Leads to a bachelor's associate, graduate, or professional degree;

(ii) Is at least a two-year program that is acceptable for full credit toward a bachelor's degree;

(iii) Is at least a one-year training program leading to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation;

(iv) Is, for a proprietary institution of higher education or a post-secondary vocational institution, at least a six-month training program leading to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation;

(v) Is, for a vocational school, a program of postsecondary vocational or technical education leading to a degree, certificate, or other recognized educational credential that—

(A) Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations;

(B) In the case of an institution using clock hours to measure academic progress, is no less than 300 clock hours of supervised training;

(C) In the case of an institution using credit hours or units to measure academic progress, is no less than eight semester or trimester hours or units or 12 quarter hours or units;

(D) In the case of a program of study by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion in not less than six months; and

(E) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration; or

(vi) Is, for purposes of the GSL, PLUS, or SLS programs, at least a one-year training program for graduates of accredited health-professions programs that—

(A) Is provided by a hospital or health-care facility; and

(B) Leads to a degree or certificate; or

(3) For purposes of the Pell Grant, ICL, and SEOG programs, is an undergraduate program; and

(4) For the purposes of the Pell Grant Program, may consist of instruction in English as a second language (ESL) in accordance with paragraph (b)(2) of this section.

(b) *Pell Grant Program*—(1) *Study by correspondence.* For purposes of the Pell Grant Program, an eligible program of study by correspondence is an undergraduate program of education or training that meets the criteria for an eligible program in paragraph (a) of this section and that is designed to require at least 12 hours of preparation per week.

(2) *English as a second language (ESL).* (i) The Secretary considers a program that consists solely of instruction in ESL to be an eligible program if the program meets the requirements of paragraph (a) of this section and admits only students who the institution determines to need to ESL instruction to use already existing knowledge, training, or skills.

(ii) An institution shall document its determination that the instruction in ESL described in paragraph (b)(2)(i) of this section is necessary to enable each student whom it admitted to use already existing knowledge, training, or skills.

(Authority: 20 U.S.C. 1070a, 1070b, 1070c–1070c–2, 1085, 1087aa–1087hh, 1088, 1091, and 1141; 42 U.S.C. 2753)

8. Subpart B is revised to read as follows:

Subpart B—Standards for Participation in Title IV, HEA Programs

§ 668.11 Scope.

(a) This subpart establishes standards that an institution must meet in order to participate in any Title IV, HEA program.

(b) Noncompliance with these standards by an institution already participating in any Title IV, HEA program may subject the institution to proceedings under Subpart G. These proceedings may lead to a fine, or a limitation, suspension, or termination of the institution's eligibility to participate in any or all of the Title IV, HEA programs.

(Authority: 20 U.S.C. 1094)

§ 668.12 Institutional participation agreement.

(a) An institution may participate in any Title IV, HEA program, other than the SSIG Program, only if—

(1) The Secretary determines that the institution meets the standards established in this subpart; and

(2) The institution enters into a written participation agreement with the Secretary, on a form approved by the Secretary.

(b)(1) A participation agreement conditions the initial and continued eligibility of the institution to participate in any Title IV, HEA program upon compliance with the provisions of this part and the individual program regulations.

(2) In the participation agreement, the institution agrees—

(i) That it will comply with the statutory and regulatory requirements applicable to the Title IV, HEA programs, including the requirement that it will use funds it receives under any Title IV, HEA program and any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(ii) That it has in operation a drug abuse prevention program that the institution has determined to be accessible to any officer, employee, or student at that institution; and

(iii) That it will not request from or charge any student a fee for processing or handling—

(A) Any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance; or

(B) The Federal Student Assistance Report required under section 483(f) of the HEA.

(c)(1) Except as provided under paragraph (c)(3) of this section, a participation agreement becomes effective on the date executed by the Secretary.

(2) A participation agreement supersedes any prior participation agreement between the Secretary and the institution.

(3) The new participation agreement of an institution that changed its ownership resulting in a change in control is effective on the date that the institution changed its ownership if—

(i) The institution's prior participation agreement was not terminated through procedures contained in Subpart G; and

(ii) Under the Pell Grant and campus-based programs, the date that the institution changed ownership that resulted in a change in control and the date on which the Secretary executed the new agreement took place in the same award year.

(d)(1) Except as provided in paragraph (e) of this section, the Secretary terminates a participation agreement through the procedures set forth in Subpart G.

(2) An institution may terminate a participation agreement.

(3) If the Secretary or the institution terminates a participation agreement under this paragraph, the Secretary establishes the termination date.

(e) An institution's participation agreement automatically terminates on the date the institution changes ownership that results in a change in control.

(Authority: 20 U.S.C. 1094)

§ 668.13 Factors of financial responsibility.

(a) To begin and to continue participation in any Title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this section.

(b) In general, the Secretary considers an institution to be financially responsible if it is able to—

(1) Provide the services described in its official publications and statements;

(2) Provide the administrative resources necessary to comply with the requirements of this subpart; and

(3) Meet all of its financial obligations, including, but not limited to—

(i) Refunds of institutional charges; and

(ii) Repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

(c) Notwithstanding paragraph (b) of this section, the Secretary considers an institution not to be financially responsible if—

(1) Under its basis of accounting, it—

(i) Has had operating losses over at least its two most recent fiscal years; or

(ii) Had, for its latest fiscal year, a deficit net worth. A deficit net worth occurs when the institution's liabilities exceed its assets;

(2) Under an accrual basis of accounting, it had, at the end of its latest fiscal year, a ratio of current assets to current liabilities of less than 1:1;

(3) Under a fund accounting system, its unrestricted current or operating fund reflects sustained material deficits over at least its two most recent fiscal years; or

(4)(i) The institution, its owner, or its chief executive officer has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or has been judicially determined to have committed fraud involving Federal funds;

(ii) The institution employs an individual in a capacity that involves the administration of Title IV, HEA program, or the receipt of Title IV, HEA program funds who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or who has been judicially determined to have committed fraud involving Federal funds; or

(iii) The institution uses any individual, agency, or organization that has been, or whose officers or employees have been—

(A) Convicted of, or pled *nolo contendere* or guilty to, a crime invovling the acquisition, use, or expenditure of Federal funds; or

(B) Judicially determined to have committed fraud involving Federal funds.

(d)(1) The Secretary may determine an institution to be financially responsible, even if the institution is considered not to be financially responsible under paragraphs (b), or (c)(1) through (c)(3) of this section, if the institution submits to the Secretary a letter of credit payable to the Secretary in an amount established by the Secretary, a performance bond in an amount established by the Secretary, or any other document requested by the Secretary that demonstrates that the institution has sufficient financial responsibility to begin or to continue to participate in any Title IV, HEA program.

(2) The Secretary may determine that an institution is financially responsible even if it would otherwise be considered not to be financially responsible under paragraph (c)(4) of this section if—

(i) The funds that were fraudulently obtained, or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid;

(ii) The individuals who were convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and

(iii) At least five years have elapsed from the date of the conviction, *nolo contendere* plea, guilty plea, or judicial determination.

(e) The Secretary determines whether an institution is financially responsible in accordance with paragraphs (b), (c), and (d) of this section by evaluating documents submitted by the institution and information obtained from other sources, including outside sources of credit information. To enable the Secretary to make this determination, an institution shall, to the extent requested by the Secretary, submit for its latest complete fiscal year and its current fiscal year—

(1) A profit and loss statement and a balance sheet that are based on the same basis of accounting used by the institution for financial reporting; or

(2) A financial audit report of the institution. The audit must have been conducted by a licensed certified public accountant in accordance with generally accepted auditing standards.

(f)(1) The Secretary may require that the documents referred to in paragraph (e)(1) of this section be audited and certified by a licensed certified public accountant in accordance with generally accepted auditing standards.

(2) If the Secretary requires an institution to submit a profit and loss statement, a balance sheet, or an audit report under paragraph (e) of this section, the Secretary may also require the institution to submit the accountant's or auditor's work papers.

(g)(1) An otherwise eligible institution shall obtain and keep current adequate fidelity bond coverage in order to protect the Government's interest in the Title IV, HEA program funds the institution received as a trustee. A fidelity bond indemnifies the holder against losses resulting from fraud or lack of integrity, honesty, or fidelity of its employees or officers.

(2) A public institution that is bonded by the State against the type of losses described in paragraph (g)(1) of this section does not have to obtain additional fidelity bond coverage.

(3) Any bond required under this paragraph must be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

(Authority: 20 U.S.C. 1094 and Section 4 of Pub. L. 95–452)

§ 668.14 Standards of administrative capability.

To begin and to continue participation in any Title IV, HEA program, an institution shall demonstrate to the

Secretary that it is capable of adequately administering that program under the standards established in this section. Except as provided in § 668.15, the Secretary considers an institution to have that administrative capability if it establishes and maintains student and financial records required under § 668.23 and the individual Title IV, HEA program regulations and if it—

(a) Designates a capable individual to be responsible for—

(1) Administering all the Title IV, HEA programs in which it participates; and

(2) Coordinating the Title IV, HEA programs with the institution's other Federal and non-Federal programs of student financial assistance;

(b) Communicates to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by any institutional office that bears on a student's eligibility for Title IV, HEA program assistance;

(c) Uses an adequate number of qualified persons to administer the Title IV, HEA program. In determining whether an institution uses an adequate number of qualified persons, the Secretary considers the number of students aided, the number and types of programs in which the institution participates, the number of applications evaluated, the amount of funds administered, and the financial aid delivery system used by the institution;

(d)(1) Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and

(2) Divides the functions of authorizing payments and disbursing funds so that no office has responsibility for both functions with respect to any particular student aided under the programs;

(e) Establishes, publishes, and applies reasonable standards for measuring whether a student, who is otherwise eligible for aid under any Title IV, HEA program, is maintaining satisfactory progress in his or her course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has those standards;

(2) For a student enrolled in an eligible program who is to receive assistance under a Title IV, HEA program, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under a Title IV, HEA program; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum time frame in which the student must complete his or her educational objective, degree, or certificate. The time frame must be—

(A) Determined by the institution;

(B) Based on the student's enrollment status; and

(C) Divided into increments, not to exceed one academic year.

(iii) A schedule established by the institution designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment in order to complete the educational objective, degree, or certificate within the maximum time frame.

(iv) A determination at the end of each increment by the institution whether the student has successfully completed the appropriate percentage or amount of work according to the established schedule.

(v) Consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and programs established by the institution.

(vi) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(vii) Specific procedures under which a student may appeal a determination that the student is not making satisfactory progress.

(viii) Specific procedures for reinstatement of aid; and

(4) Meet or exceed the requirements of § 668.7(c);

(f) Develops and applies an adequate system to identify and resolve discrepancies in the information it receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs. In determining whether the institution's system is adequate, the Secretary considers whether the institution obtains and reviews—

(1) All student aid applications, need analysis documents, Statements of Educational Purposes, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

(2) Any documents, including any copies of State and Federal income tax returns, that are normally collected by the institution to verify information received from the student or other sources; and

(3) Any other information normally available to the institution regarding a student's citizenship, previous educational experience, or other factors relating to the student's eligibility for Title IV, HEA program funds;

(g)(1) After conducting the review of an application provided for under paragraph (f) of this section, refers for investigation any information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application. The type of information that an institution must refer is that which is relevant to the eligibility of the applicant for Title IV, HEA program assistance, or the amount of the assistance. Examples of this type of information are:

(i) False claims of independent student status;

(ii) False claims of citizenship;

(iii) Use of false identities;

(iv) Forgery of signatures or certifications; and

(v) False statements of income;

(2) Makes the referrals described in paragraph (g)(1) of this section to the Office of Inspector General of the Department of Education, or, if more appropriate, to a State or local law enforcement agency with jurisdiction to investigate the matter; and

(3) Reports to the Office of Inspector General for each calendar year all referrals made to State or local law enforcement agencies under this paragraph for that calendar year;

(h) Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding—

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed or applied to a student's account; and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, its standards of satisfactory progress, and other conditions that may alter the student's aid package; and

(i) Does not otherwise appear to lack the ability to administer the Title IV HEA programs competently.

(Authority: 20 U.S.C. 1094)

§ 668.15 Additional factors for evaluating administrative capability.

(a) The Secretary considers it an indication of an institution's impaired capability of properly administering Title IV, HEA programs if—

(1) The default rate on loans made under the GSL, PLUS, SLS, or Perkins Loan programs to students for attendance at that institution exceeds 20 percent of the principal of all those loans that have reached the repayment period;

(2) For an institution that has a common academic year for a majority of its students, more than 33 percent of the regular students who are enrolled on the first day of classes of an academic year withdraw from enrollment at that institution during the academic year; or

(3) For an institution which does not have a common academic year for a majority of its students, more than 33 percent of the regular students enrolled on the first day of classes of any eight-month period withdraw during that period.

(b)(1) If the default or withdrawal rate for an institution is as high or higher than the rates set forth in paragraph (a) of this section, the Secretary may require the institution to submit for its latest complete fiscal year—

(i) A profit and loss statement and a balance sheet that are based on the same basis of accounting used by the institution for financial reporting;

(ii) A financial audit report of the institution. The audit must have been conducted by a licensed certified public accountant in accordance with generally accepted auditing standards; or

(iii) Other information required by the Secretary to determine the cause of the high default or withdrawal rate and the best measures for alleviating those conditions.

(2) The date of the statement's preparation of the documents referred to in paragraph (b)(1)(i) of this section must be within 12 months of the date of the Secretary's request.

(c) The Secretary may require that the profit and loss statement and balance sheet referred to in paragraph (b)(1)(i) of this section be audited and certified by a licensed certified public accountant in accordance with generally accepted auditing standards.

(d)(1) If the default or withdrawal rate for an institution indicates an impaired capability to administer any Title IV, HEA program, the Secretary requires the institution to take reasonable and appropriate measures to alleviate those conditions as a requirement for its continued participation in those programs.

(2) Before initiating that action, the Secretary informs the institution of the findings and provides it at least 35 days to respond.

(Authority: 20 U.S.C. 1094 and section 4 of Pub. L. 94-452)

§ 668.16 Federal interest in Title IV, HEA program funds.

Funds received under the Pell Grant SEOG, CWS, ICL, and Perkins Loan programs, except those funds received for the administrative cost allowance, are held in trust for the intended student beneficiaries and the Secretary. The institution, as a trustee of Federal funds, may not use or hypothecate (*i.e.* use as collateral) Title IV, HEA program funds for any other purpose.

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

§ 668.17 Change in ownership resulting in a change in control.

(a) An eligible institution, or a previously eligible institution that participated in any Title IV, HEA program, that changes ownership resulting in a change in control is not considered by the Secretary to be the same institution unless—

(1) The new owner agrees to be liable, or the old and new owners agree to be jointly and severally liable, for all improperly spent Title IV, HEA program funds provided to the institution before the effective date of the change;

(2) The new owner agrees—

(i) To abide by the institution's refund policy in effect before the effective date of the change for students who are enrolled before the effective date; and

(ii) To honor all student enrollment contracts that were signed by the institution before the effective date of the change;

(3) The institution submits individual statements for both new and former owners listing their assets, liabilities, and net worth, and either—

(i) A profit and loss statement and balance sheet for the institution's latest complete fiscal year; or

(ii) An audit report for the institution's latest complete fiscal year prepared by a certified or licensed public accountant; and

(4) The institution submits additional financial documents if requested by the Secretary because the financial information provided in paragraph (a)(3) of this section is insufficient.

(b) The Secretary may require that the statements provided in paragraph (a)(3) of this section be audited and certified by a certified public accountant.

(c) If the Secretary considers the institution to be the same institution, the new owner must enter into a new participation agreement with the Secretary, to participate in the Title IV, HEA programs.

(d) For purposes of this part, a change in ownership of an institution that results in a change in control means any action by which a person or corporation obtains authority to control the actions of that institution. These actions may include, but are not limited to—

(1) The sale of the institutions;

(2) The transfer of the controlling interest of stock of an institution to its parent corporation;

(3) The merger of two or more institutions;

(4) The division of one institution into two or more institutions; or

(5) The transfer of the assets of an institution to its parent corporation.

(Authority: 20 U.S.C. 1088(b) and 1094)

§ 668.18 Written agreements between an eligible institution and an ineligible entity.

(a) An institution may, without losing its eligibility to participate in any Title IV, HEA program, enter into a written agreement to have a portion of its educational program(s) provided for some or all of its students by an institution, school, or organization that is not eligible to participate in Title IV, HEA programs.

(b)(1) An eligible student may receive Title IV, HEA program assistance under such an agreement if the eligible institution gives credit to students in the portion of the program provided by the ineligible institution(s), school(s), or organization(s) on the same basis as if it provided the portion of the program itself; and

(2)(i) The portion of the program provided by the ineligible institution(s), school(s), or organization(s) does not exceed 25 percent of the student's total program of study; or

(iii) The eligible institution's nationally recognized accrediting agency, or State agency for the approval of public postsecondary vocational education, determines that its agreement meets the agency's standards for contracting for educational services.

(c) The eligible institution shall take into account all courses taken by the student at the eligible institution and ineligible institution(s), school(s), or organization(s) that are covered by the written agreement when determining the student's enrollment status and cost of attendance.

(d) The eligible institution shall maintain all records regarding the student's eligibility for and receipt of the Title IV, HEA program assistance.

(Authority: 20 U.S.C. 1094)

§ 668.19 Financial aid transcript.

(a)(1) An institution shall determine whether a student who is applying for assistance under any Title IV, HEA program has previously attended another eligible institution.

(2) Before a student who previously attended another eligible institution may receive any Title IV, HEA program funds, the institution or the student shall request each institution the student previously attended to provide a financial aid transcript to the institution the student is or will be attending.

(3) Except as provided in paragraph (a)(5) of this section, until an institution receives a financial aid transcript from each eligible institution the student previously attended, the institution—

(i) May withhold payment of Pell Grant, campus-based, and ICL funds to the student;

(ii) May disburse Pell Grant, campus-based, or ICL funds to the student for one payment period only;

(iii) May decline to certify the student's GSL or SLS application;

(iv) Shall not release GSL or SLS proceeds to a student; and

(v) Shall not certify an application for a PLUS Program loan sought on behalf of the student.

(4)(i) An institution may not hold GSL or SLS proceeds under paragraph (a)(3) of this section for more than 45 days. If an institution does not receive all required financial aid transcripts for a student within 45 days of the receipt of those proceeds, the institution shall return the loan proceeds to the appropriate lender.

(ii) An institution that certifies a GSL or SLS application before receiving all required financial aid transcripts shall return to the lender any GSL or SLS proceeds for the student if it receives a financial aid transcript indicating that—

(A) The amount of the loan proceeds would cause the student to exceed a loan limit under the GSL or SLS programs;

(B) The student is in default on any loan made under the GSL, PLUS, SLS, Consolidation Loan, ICL, National Defense/Direct Student Loan, or Perkins Loan programs; or

(C) The student owes a repayment on a grant received under the Pell Grant, SEOG, or SSIG programs.

(5) The institution may disburse Title IV, HEA program funds to the student without receiving a financial aid transcript from an eligible institution the student previously attended if the institution the student previously attended—

(i) Has closed, and information concerning the student's receipt of Title IV, HEA program assistance for attendance at that institution is not available;

(ii) Is not located in a State; or

(iii) Provides the disbursing institution with the written certification described in paragraph (b)(2)(ii) of this section.

(b) Upon request, each institution located in a State shall promptly provide to the institution for which a financial aid transcript is requested—

(1) All information in its possession concerning whether a student attended institutions other than itself and the institution for which the transcript is requested; and

(2)(i) A financial aid transcript for that student, if the student received or benefited from any Title IV, HEA program assistance while attending the institution providing the transcript; or

(ii) A written certification that—

(A) The student did not receive or benefit from any Title IV, HEA program assistance while attending the institution from which the transcript was requested; or

(B) The transcript pertains solely to years for which the institution no longer has and is no longer required to keep records under the applicable Title IV, HEA program recordkeeping requirements.

(c) A financial aid transcript must be signed by an official authorized by the institution providing the transcript to disclose information in connection with Title IV, HEA programs and must include, for any award year for which that institution has or is required to keep records—

(1) The student's name and social security number;

(2) Whether the student was treated as an independent student under any Title IV, HEA program in the award year preceding the award year for which a financial aid transcript is requested;

(3) Whether the student is in default on any loan made under the ICL, National Defense/Direct Student Loan, or Perkins Loan programs for attendance at the institution providing the transcript;

(4) To the extent that the institution is aware, whether the student is in default on any loan made under the GSL, PLUS, SLS, or Consolidation Loan programs, or any other loan made under the ICL, National Defense/Direct Student Loan, or Perkins Loan programs;

(5) Whether the student owes a refund on any grant made under the Pell Grant or SEOG programs and, to the extent that the institution is aware, the SSIG Program, for attendance at the institution providing the transcript;

(6) To the extent that the institution is aware, whether the student owes a refund on any grant made under the Pell Grant, SEOG, or SSIG programs for attendance at any other institution;

(7) For the award year for which a financial aid transcript is requested, the student's Scheduled Pell Grant and the amount of Pell Grant funds disbursed to the student;

(8) The total amount of loans made under the ICL, National Defense/Direct Student Loan, or Perkins Loan programs to the student for attendance at the institution providing the transcript, and, to the extent that the institution is aware, the amount of loans made to the student for attendance at other institutions;

(9) Whether the student owes an outstanding balance on either a Defense loan or a Direct loan made for attendance at the institution providing the transcript;

(10) The amount of and period covered by each loan made to the student under the GSL, PLUS, or SLS programs for attendance at the institution providing the transcript;

(11) To the extent that the institution is aware, the amount of and period covered by any loan made to the student under the GSL, PLUS, or SLS programs for attendance at any other institution;

(12) The amount of and period covered by each loan made under the PLUS Program on behalf of the student for attendance at the institution providing the transcript; and

(13) To the extent that the institution is aware, the amount of and period covered by any loan made under the PLUS Program on behalf of the student for attendance at any other institution.

(Authority: 20 U.S.C. 1094)

§ 668.20 Limitation on the amount of remedial coursework that is eligible for Title IV, HEA program assistance.

(d) A noncredit or reduced credit remedial course is a course of study designed to increase the ability of a student to pursue a course of study leading to a certificate or degree.

(1) A noncredit remedial course is one for which no credit is given toward a certificate or degree; and

(2) A reduced credit remedial course is one for which reduced credit is given toward a certificate or degree.

(b) Except as provided in paragraphs (c) and (d) of this section, in determining a student's enrollment status and cost of attendance, an institution shall include any noncredit or reduced credit remedial course in which the student is enrolled. The institution shall attribute the number of credit or clock hours to a noncredit or reduced credit remedial course by—

(1) Calculating the number of classroom and homework hours required for that course;

(2) Comparing those hours with the hours required for nonremedial courses in a similar subject; and

(3) Giving the remedial course the same number of credit or clock hours it gives the nonremedial course with the most comparable classroom and homework requirements.

(c) In determining a student's enrollment status under the Title IV, HEA programs or a student's cost of attendance under the campus-based, GSL, PLUS, and SLS programs, an institution may not take into account any noncredit or reduced credit remedial course if—

(1) That course is part of a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course is necessary to enable the student to complete a degree or certificate program; or

(2) The educational level of instruction provided in the noncredit or reduced credit remedial course is below the level needed to pursue successfully the degree or certificate program offered by that institution after one year in that remedial course.

(d) Except as set forth in paragraph (f) of this section, an institution may not take into account more than one academic year's worth of noncredit or reduced credit remedial coursework in determining—

(1) A student's enrollment status under the Title IV, HEA programs; and

(2) A student's cost of attendance under the campus-based, GSL, PLUS, and SLS programs.

(e) One academic year's worth of noncredit or reduced credit remedial coursework is equivalent to—

(1) Thirty semester or 45 quarter hours; or

(2) Nine hundred clock hours.

(f) Courses in English as a second language do not count against the one-year academic limitation contained in paragraph (d) of this section.

[Authority: 20 U.S.C. 1094]

§ 668.21 Treatment of Pell Grant, SEOG, ICL, and Perkins Loan program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.

(a)(1) If a student officially withdraws, drops out, or is expelled before his or her first day of class of a payment period, all funds paid to the student for that payment period for institutional or noninstitutional costs under the Pell Grant, SEOG, ICL, and Perkins Loan programs are an overpayment.

(2) The institution shall return that overpayment to the respective Title IV, HEA programs in the amount that the student received from each program.

(b) For purposes of this section, the Secretary considers that a student drops out before his or her first day of class of a payment period if the institution is unable to document the student's attendance at any class during the payment period.

[Authority: 20 U.S.C. 1094]

§ 668.22 Distribution formula for institutional refund and for repayments of disbursements made to the student for noninstitutional costs.

(a) *Repayment of institutional refunds to Title IV, HEA programs.* (1) An institution shall return a portion of a refund owed to a student to the Title IV, HEA programs if—

(i) The student officially withdraws, drops out, or is expelled from the institution on or after his or her first day of class of a payment period; and

(ii) The student received assistance under any Title IV, HEA program other than the CWS Program.

(2) For purposes of this section, an institutional refund means the amount paid for institutional charges for a payment period by financial aid and/or cash payments minus the amount retained by the institution for the portion of the payment period that the student was actually enrolled at the institution. The amount retained by the institution for the student's actual period of enrollment is calculated according to the institution's refund policy.

(3) The portion of the refund that the institution shall return to the Title IV, HEA program(s) is the lesser of—

(i) The amount of assistance received under the Title IV, HEA programs other than under the CWS Program for the payment period; or

(ii) The amount obtained by multiplying the institutional refund by the following fraction:

Total amount of Title IV, HEA program assistance (exclusive of CWS Program earnings) awarded for the payment period

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Total amount of assistance (exclusive of all work earnings) awarded for the payment period.

(b) *Repayments to Title IV, HEA programs of disbursements made to the student for noninstitutional costs.* (1) If a student officially withdraws, drops out, or is expelled on or after his or her first day of class of a payment period, the institution shall determine what portion, if any, of the Title IV, HEA program assistance (other than from the CWS, GSL, PLUS, or SLS program received for that payment period by the student for non-institutional costs is an overpayment that must be repaid by the student. The institution shall make every reasonable effort to contact the student and recover the overpayment in accordance with program regulations (34 CFR Parts 673, 674, 675, 676, and 690).

(2)(i) To determine if any of the Title IV, HEA program assistance received by the student for noninstitutional costs constitutes an overpayment, the institution shall subtract the noninstitutional costs incurred by the student for that portion of the payment period during which the student was enrolled from the amount of assistance disbursed to the student.

(ii) Noninstitutional costs may include, but are not limited to, room and board for which the student does not contract with the institution, books, supplies, transportation, and miscellaneous expenses.

(3) The portion of the overpayment as determined according to paragraph (b)(2) of this section that the institution shall return to the Title IV, HEA program(s) is the lesser of—

(i) The amount of assistance received under the Title IV, HEA programs other than the CWS, GSL, PLUS, or SLS programs for the payment period; or

(ii) The amount obtained by multiplying the overpayment by the following fraction:

Total amount of Title IV, HEA program assistance (exclusive of College Work Study and GSL, PLUS, and SLS loans) awarded for the payment period.

Total amount of assistance (exclusive of all work earnings and GSL, PLUS, and SLS loans awarded for the payment period.

(c) *Payment period.* For purposes of this section—

(1) A payment period under the GSL, PLUS, and SLS programs is a semester, trimester or quarter. At an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of the academic year; and

(2) The amount of a loan made under GSL, PLUS, or SLS program is considered to be awarded in proportionate amounts corresponding to the number of payment periods calculated according to paragraph (c)(1) of this section.

(d) *Drop out date.* For purposes of this section, a student is considered to have dropped out on the last recorded date of class attendance by the student as documented by the institution.

(3) *Distribution among the Title IV, HEA programs.* An institution shall

develop a written policy allocating the Title IV, HEA program portion of the refund determined under paragraph (a) of this section of the Title IV, HEA program portion of the overpayment determined under paragraph (b) of this section among the Title IV, HEA program(s) from which the student received aid. This allocation policy must be applied consistently to all students who have received Title IV, HEA program assistance and must conform to the following:

(1) No amount of the Title IV, HEA program portion of the refund or of the overpayment may be allocated to the CWS Program.

(2) No amount of Title IV, HEA program portion of the overpayment may be allocated to the GSL, PLUS or SLS program.

(3) The amount of the Title IV, HEA program portion of the refund or of the overpayment allocated to a specific Title IV, HEA program may not exceed the amount that the student received from that program.

(4) The amount of the Title IV, HEA program portion of the refund allocated to the GSL, PLUS, and SLS programs must be returned to the borrower's lender by the institution in accordance with program regulations (34 CFR Part 682).

(5) The amount of the Title IV, HEA program portion of the refund allocated to the Title IV, HEA programs other than the CWS, GSL, PLUS and SLS programs must be returned to the appropriate program account(s) by the institution within 30 days of the date that the student officially withdraws or is expelled or the institution determines that a student has unofficially withdrawn.

(6) The amount of the Title IV, HEA program portion of the overpayment allocated to the Title IV, HEA programs other than the CWS, GSL, PLUS, and SLS programs must be returned to the appropriate program account(s) within 30 days of the date that the student makes the repayment.

(Authority: 20 U.S.C. 1094)

§ 668.23 Audits, records, and examination.

(a) An institution which participates in the ICL (34 CFR Part 673), Perkins Loan (34 CFR Part 674), CWS (34 CFR Part 675), SEOG (34 CFR Part 676), GSL (34 CFR Part 682), PLUS (34 CFR Part 682), SLS, or Pell Grant (34 CFR Part 690) programs shall comply with the regulations for those programs concerning—

(1) Fiscal and accounting systems;

(2) Program and fiscal recordkeeping; and

(3) Record retention.

(b) For purposes of audit and examination, an institution which participates in any Title IV, HEA program shall give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records required by the program regulations and this part and to any other pertinent books, documents, papers, and records.

(c)(1) An institution which participates in the ICL, Perkins Loan, CWS, SEOG, GSL, PLUS, SLS, or Pell Grant programs shall have performed a financial and compliance audit of its Title IV, HEA programs. The audit shall be conducted by an independent auditor in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office's (GAO's) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.*

(2) Procedures for audits are contained in audit guides developed by, and available from, the Education Department's Office of the Inspector General. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO's *Standards.*

(3) The institution shall have an audit performed at least once every two years. Each audit must cover the institution's activities for the entire period of time since the preceding audit.

(4)(i) If the institution receives campus-based funds, the institution shall submit the audit report to the Inspector General by March 31 of the year following the last award year covered by the audit.

(ii) If the institution does not receive campus-based funds, the institution shall submit the audit report to the Inspector General by January 31 of the year following the last year covered by the audit.

(5) The institution shall—

(i) Give the Secretary and the Inspector General access to records or other documents necessary to review the audit; and

(ii) Include in any arrangement with an individual or firm conducting an audit described in this section a requirement that the individual or firm shall give the Secretary and the Inspector General access to records or other documents necessary to review the audit.

(d) The Secretary considers the audit requirement in paragraph (c) of this section to be satisfied by an audit conducted in accordance with the Single Audit Act (Chapter 75 of Title 31, United States Code).

(e) Upon written request, an institution shall give the Secretary access to all Title IV, HEA program and fiscal records, including records reflecting transactions with any financial institution with which it deposits or has deposited any Title IV, HEA program funds.

(f)(1) In addition to the records required under the applicable program regulations and this part, for each recipient of Title IV, HEA program assistance, the institution shall establish and maintain, on a current basis, records regarding—

(i) The student's admission to, and enrollment status at, the institution;

(ii) The program and courses in which the student is enrolled;

(iii) Whether the student is maintaining satisfactory progress in his or her course of study;

(iv) Any refunds due or paid to the student, the Title IV, HEA program account(s) and the student's lender under the GSL, PLUS, and SLS programs;

(v) The student's placement by the institution in a job if the institution provides a placement service and the student uses that service;

(vi) The student's prior receipt of financial aid (see § 668.19); and

(vii) The verification of student aid application data.

(2)(i) An institution shall establish and maintain records regarding the educational qualifications of each regular student it admits, whether or not the student receives Title IV, HEA assistance, which are relevant to the institution's admission standards.

(ii) An institution at which only certain programs have been determined eligible shall establish and maintain records regarding the admissions requirements and educational qualifications of each regular student enrolled in the eligible program(s), whether or not the student received Title IV, HEA assistance.

(3) Records shall be—

(i) Systematically organized; and

(ii) Readily available for review by the Secretary at the geographical location where the student will receive his or her degree or certificate of program or course completion.

(Authority: 20 U.S.C. 1088, 1094, 1141 and section 4 of Pub. L. 95-452)

§ 668.24 Audit exceptions and repayments.

(a)(1) If, as a result of a Federal audit or an audit performed at the direction of the institution, the Education Department's Inspector General questions an expenditure or the

institution's compliance with an applicable requirement (including the lack of proper documentation), the Inspector General notifies the Secretary and the institution of the questioned expenditure or procedure.

(2) If the institution believes that the questioned expenditure or procedure was proper, it shall notify the Secretary in writing of its position and the reasons for its position.

(3) The institution's response must be received by the Secretary within 35 days of the date of the Inspector General's notification to the institution.

(b)(1) Based on the audit finding and the institution's response, the Secretary determines the amount of funds improperly spent, if any, and instructs the institution as to the manner of repayment.

(2) The institution shall repay those funds within 45 days of the date of the Secretary's notification, unless—

(i) The institution files an appeal under the procedures established in Subpart H; or

(ii) The Secretary permits a longer repayment period.

(3) If the institution is found to have expended funds improperly under the proceedings established in Subpart H, the institution shall repay those funds within 30 days of a final determination under Subpart H unless the Secretary permits a longer repayment period.

(Authority: 20 U.S.C. 1094)

§ 668.25 Loss of institutionalized eligibility.

(a) When an institution loses its eligibility or ceases to provide educational instruction, it shall—

(1) Immediately notify the Secretary of that fact;

(2) Refund to the Federal government, or otherwise dispose of under instructions from the Secretary, any unobligated Title IV, HEA program funds and any GSL, PLUS, or SLS proceeds it has received, except—

(i) Those funds for which it has made a commitment but not yet paid to students in that payment period; and

(ii) Its administrative allowance, if applicable;

(3) Submit to the Secretary within 45 days after the effective date of closing or loss of eligibility—

(i) All financial, performance, and other reports required by each appropriate Title IV, HEA program regulation; and

(ii) A letter of engagement for an audit or an audit report of all Title IV, HEA program funds it received;

(4) Inform the Secretary of the arrangements it has made for the proper retention and storage for a minimum of five years of all records concerning the administration of the Title IV, HEA programs;

(5) Inform the Secretary of how it will provide for the collection of any outstanding Title IV, HEA loans; and

(6) Distribute refunds of unearned tuition and fees according to § 668.21.

(b) For the purposes of this section—

(1) A commitment under the Pell Grant Program occurs after a student is enrolled and attending the institution and has submitted a valid student aid report to the institution;

(2) A commitment under the campus-based and ICL programs occurs when the student is enrolled and attending the institution and has received an award letter from the institution; and

(3) A commitment under the GSL, PLUS, and SLS programs occurs when the Secretary or a guarantee agency advises the lender that the loan is guaranteed.

(Authority: 20 U.S.C. 1094)

9. Sections 669.32(a) and (d) are revised to read as follows:

§ 668.32 Statement of Educational Purpose.

(a) Before receiving any funds under any Title IV, HEA program, a student shall file a Statement of Educational Purpose for each award year with the institution, or under the GSL, PLUS, or SLS programs, with the lender. In this statement the student shall—

(1) Include his or her social security number or if he or she does not have a social security number, his or her student identification number; and

(2) Certify that he or she will use any funds received under these programs solely for educational expenses connected with attendance at the institution at which the student is enrolled or accepted for enrollment, or, for the purposes of the GSL, PLUS, or SLS programs, at the institution named on the student's loan application.

* * * * *

(d) Until a student who is applying for Title IV, HEA program assistance under the Pell Grant, campus-based, SSIG or ICL programs files a Statement of Educational Purpose with the institution, an institution may not, for any period of instruction, disburse funds to the student under any Title IV, HEA program.

* * * * *

10. Section 668.34 is revised to read as follows:

§ 668.34 Model Statement of Educational Purpose and Registration Status.

The Secretary considers the following statement to satisfy the requirements of §§ 668.32 and 668.33(a) and the notification requirement of § 668.35(a):

Statement of Educational Purpose

I certify that I will use any money I receive under a Title IV, HEA loan, grant, work study, or scholarship program only for expenses related to my study at (Name of Institution)

Statement of Registration Status

—— I certify that I am not required to be registered with Selective Service because:

—— I am female.

—— I am in the armed services on active duty. (Note: Does not apply to members for the Reserves and National Guard who are not on active duty.)

—— I have not reached my 18th birthday.

—— I was born before 1960.

—— I am a permanent resident of the Trust Territory of the Pacific Islands.

—— I am a citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

—— I certify that I am registered with Selective Service.

Signature: ———

Date: ———

Social Security Number (or Student Identification Number only if you have no Social Security Number):

———

* * * * *

11. In § 668.82, paragraph (d) is revised to read as follows:

§ 668.82 Standard of conduct.

* * * * *

(d)(1) An institution violates its fiduciary duty if—

(i) The institution, its owner, or its chief executive officer has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or has been judicially determined to have committed fraud involving Federal funds;

(ii) The institution employs an individual in a capacity that involves the administration of Title IV, HEA programs or the receipt of Title IV, HEA program funds who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or who has been judicially determined to have

committed fraud involving Federal funds; or

(iii) The institution uses any individual, agency, or organization that has been, or whose officers or employees have been—

(A) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds; or

(B) Judicially determined to have committed fraud involving Federal funds.

(2) A violation for a reason contained in paragraph (d)(1) of this section of an institution's fiduciary duty is an automatic ground for terminating the institution's eligibility to participate in any Title IV, HEA program.

* * * * *

12. Section 668.96 is revised to read as follows:

§ 668.96 Reinstatement after termination.

(a)(1) An institution whose eligibility to participate in any or all of the Title IV, HEA programs has been terminated may file a request for reinstatement as a participating eligible institution.

(2) Except for an institution that has been terminated for engaging in substantial misrepresentation concerning the nature of its educational program, the nature of its financial charges or the employability of its graduates, a request for reinstatement may not be made before the expiration of 18 months after the effective date of the termination.

(3) An institution whose eligibility to participate was terminated because the institution engaged in substantial misrepresentation may not request reinstatement before the expiration of three months after the effective date of the termination.

(b) In order to be reinstated, an institution must—

(1) Demonstrate to the Secretary's satisfaction that it has corrected the violation(s) on which its termination was based, including payment in full to the Secretary or to other recipients of funds that the institution has improperly received, withheld, disbursed or caused to be disbursed;

(2) Meet all the requirements for participation included in Subpart B; and

(3) Enter into a new participation agreement with the Secretary.

(c) The Secretary, within 60 days of receiving the reinstatement request—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitation(s).

(Authority: 20 U.S.C. 1094)

§ 668.90 [Amended]

13. In § 668.90(a)(3)(ii), the cross-reference to "§ 668.15" is revised to read "§ 668.13".

PART 690—PELL GRANT PROGRAM

14. The authority citation for Part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a through 1070a–6, unless otherwise noted.

15. Subpart A of the Table of Contents of Part 690 is amended by removing and reserving §§ 690.4 and 690.5 and revising § 690.8 to read as follows:

Subpart A—Scope, Purpose and General Definitions

* * * * *

690.4—690.5 [Reserved]

* * * * *

690.8 Enrollment status for students taking regular and correspondence courses.

* * * * *

16. Subparts C, D, and E of the Table of Contents of Part 690 are removed and reserved.

* * * * *

Subparts C–E—[Reserved]

* * * * *

§ 690.2 [Amended]

17. In the list of definitions in 34 CFR 690.2(a), remove the terms *Guaranteed Student Loan Program, National Direct Student Loan Program, National Defense Student Loan Program, National of the United States, PLUS Loan Program,* and *State Student Incentive Grant Program,* and add, in alphabetical order, the terms *Dependent student, Eligible program, Eligible student, Income Contingent Loan (ICL) Program, Independent student, Parent,* and *Perkins Loan Program.*

18. In § 690.2(b), the terms *Disbursement Schedule* and *Payment Schedule* are revised to read as follows:

§ 690.2 General definitions.

* * * * *

Disbursement Schedule: A table showing the grant amounts three-quarter and half-time students at term based institutions using credit hours would receive for an academic year. This table, published annually by the Secretary is based on—

(1) A student's Effective Family Contribution, as determined in accordance with sections 411B, 411C, and 411D of the HEA;

(2) A student's attendance costs as defined in section 411F(5) of the HEA; and

(3) The amount of funds available for making Pell Grants.

* * * * *

Payment Schedule: A table showing a full-time student's scheduled Pell Grant for a given award year. This table, published annually by the Secretary, is based on—

(1) The student's Expected Family Contribution, as determined in accordance with sections 411B, 411C, and 411D of the HEA;

(2) The student's cost of attendance as defined in section 411F(5) of the HEA; and

(3) The amount of funds available to the Secretary for making Pell Grants.

* * * * *

§§ 690.4 and 690.5 [Removed and Reserved]

19. Sections 690.4 and 690.5 are removed and reserved.

20. Section 690.8 is revised to read as follows:

§ 690.8 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work which—

(1) Applies toward a student's degree or certificate or is remedial work taken by the student to help in his or her course of study;

(2) Is completed within the period of time required for regular course work; and

(3) does not exceed the amount of a student's regular course work for the payment period for which the student's enrollment status is being calculated.

(c) Notwithstanding the limitation in paragraph (b)(3) of this section a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to six credits per term.

Under § 690.8	Number of credit hours regular work	Number of credit hours correspondence work	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.

(Authority: 20 U.S.C. 1070a)

§ 690.10 [Amended]

21. In § 690.10(b), revise "and National Direct Student Loan" to read "Perkins Loan, and ICL".

§§ 690.31–690.39 (Subpart C)—[Removed]

22. Subpart C, consisting of §§ 690.31–690.39, is removed and reserved.

§§ 690.41–690.48 (Subpart D)—[Removed]

23. Subpart D, consisting of §§690.41–690.48, is removed and reserved.

§§ 690.51–690.57 (Subpart E)—[Removed]

24. Subpart E, consisting of §§ 690.51–690.57, is removed and reserved.

§ 690.61 [Amended]

25. In § 690.61(a)(3), revise "§§ 668.16(f)" to read "668.14(f)".

§ 690.65 [Amended]

26. In § 690.65(a), revise "34 CFR 668.14" to read "34 CFR 668.19".

27. Section 690.75 is revised to read as follows:

§ 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Pell Grant to an eligible student only after it determines that the financial aid transcript requirements of 34 CFR 668.19 have been met, and the student—

(1) Qualifies as an eligible student under 34 CFR 668.7;

(2) Is enrolled as at least a half-time undergraduate student; and

(3) Has completed required clock hours for which he or she has been paid a Pell Grant, if the student is enrolled in an eligible program that is measured in clock hours.

(b) If an eligible student submits an SAR to the institution and becomes ineligible before receiving a payment, the institution may pay the student only the amount that it determines could have been used for educational purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination before the end of the payment period, the institution may pay a Pell Grant to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination after the end of the payment period, the institution may neither pay the student a Pell Grant for that payment period nor make adjustments in subsequent Pell Grant payments to compensate for the loss of aid for that period.

(e) A member of a religious order, community, society, agency of or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution of at least $3,000 if that religious order—

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members, or has directed the member to pursue the course of study.

(Authority: 20 U.S.C. 1070a)

§ 690.82 [Amended]

28. In § 690.82(a) introductory text, revise "34 CFR 668.20" to read "34 CFR 668.23".

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Part III

Department of Education

34 CFR Parts 674, 675, and 676

Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Perkins Loan (formerly named the National Direct Student Loan (NDSL)), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs. These programs are known collectively as the campus-based programs and are authorized by the Higher Education Act of 1965 (HEA).

These regulations simplify and clarify requirements governing the campus-based programs and incorporate changes made to the HEA by the Higher Education Amendments of 1986, Public Law 99–498, and the Higher Education Technical Amendments Act of 1987, Public Law 100–50.

DATES: *Effective Date:* These regulations become effective either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments, with the exception of §§ 674.10, 675.10, 674.34, 674.35, 674.37, 674.52, 674.58, 675.16, 674.8, 674.16, 674.19, 674.31, 674.38, 675.19, 675.27, 675.34, 675.35, 676.19, and 676.16. Sections 674.10, 675.10, 674.34, 674.35, 674.37, 674.52, 674.58, 675.16, 674.8, 674.16, 674.19, 674.31, 674.38, 675.19, 675.27, 675.34, 675.35, 676.19, and 676.16 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. It should be noted, however, that the following provisions apply to the awarding of aid starting with the 1988–89 award year: the provisions governing the application for the allocation and reallocation of funds in §§ .3 and .4; the determination of financial need in accordance with Part F of Title IV of the HEA in § .9; the overaward provisions in § .14, except for the treatment of loans made under the GSL, SLS, and PLUS programs; the coordination with BIA grants in § .15; and the payment of funds under § 674.16. Section 675.23, which allows an institution to use 25 percent of its work-study funds to enter into agreements with for-profit organizations to employ students, was, by statute, effective as of July 1, 1987. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry or Richard P. Coppage, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 4018, Washington, DC 20202, telephone number (202) 732–4490.

SUPPLEMENTARY INFORMATION: The Secretary published a notice of proposed rulemaking for the campus-based programs in the **Federal Register** of February 27, 1985, 50 FR 8050–8086. Since the publication of that NPRM, the statute authorizing these programs, the Higher Education Act of 1965 (HEA), has been significantly amended by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. The regulations have been revised to conform to the new statutory amendments and have also been revised in accordance with public comment. The following discusses the statutory changes. Changes made as a result of public comment on the proposed regulations will be discussed in the appendix to these final regulations.

Conforming Changes to All Three Program Regulations.

The following is a description of the changes made in all the proposed regulations to conform those regulations to new statutory provisions.

Sections 674.3, 675.3, 676.3 Application and §§ 674.4, 675.4, 676.4 Allocation and reallocation.

The method of allocating funds to institutions under each program has been changed under each program statute. Instead of apportioning funds among the States and then allocating funds to institutions from each State's apportionment, funds are allocated directly to institutions under a statutory formula which makes no provision for appeals. Accordingly, § .3 through § .7 of each proposed regulation have been deleted and replaced with new § .3 and § .4 to reflect these statutory changes.

Section .3 of each regulation notifies institutions in general terms about the information that they must provide when they apply for funds. Section .4 of each regulation refers to the statutory section governing the allocation and reallocation of funds for that program instead of repeating the statutory formula. Those sections are section 462 of the HEA for the Perkins Loan program, section 442 of the HEA for the CWS program and section 413D of the HEA for the SEOG program. In addition each § .4 defines terms that are needed by the Secretary to carry out each program's allocation and reallocation and clearly articulates current and long-standing Department policy regarding the duration of the institution's authority to expend program funds.

Sections 462, 442, and 413D of HEA apply to the allocation of funds starting with the 1988–89 award year. Therefore, the Secretary has allocated funds to institutions under these programs for the 1987–88 award year in accordance with the procedures required for those allocations by Pub. L. 99–500, the Continuing Resolution for Fiscal Year 1987.

Sections 674.9, 675.9, 676.9 Student eligibility.

These sections were reorganized to contain only provisions specific to each program. Provisions common to all the Title IV HEA programs are now contained in the Student Assistance General Provisions regulations, 34 CFR Part 668.

Sections 674.10, 675.10, 676.10 Selection of Students for Loans, Selection of Students for CWS Employment, Selection of Students for SEOG Awards.

If an institution's allocation of funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution must award a reasonable proportion of its allocation to those students. This requirement applies to all institutions that permit students to enroll on less than a full-time basis.

Sections 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 of the proposed regulations. Allowable costs of attendance, Calculation of expected family contributions, Need analysis systems.

Beginning with the 1988–89 award year, a student's financial need, reflecting his or her expected family contribution (EFC) and cost of attendance for each of the campus-based programs, must be calculated in accordance with Part F of Title IV of the HEA. Therefore, the provisions dealing with a student's cost of attendance, the calculation of an expected family contribution, and need analysis systems that were included as §§ 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 in the proposed regulations, have been deleted. Because Part F of Title IV of the HEA is so

specific, the Secretary has not republished those statutory provisions in these regulations. However, § 674.12 provides the Perkins Loan program maximum loan limits and § 674.13 describes the condition under which an institution must reimburse its Fund.

For the 1987–88 award year, under the Student Financial Assistance Technical Amendments Act of 1982, as amended, institutions must continue to calculate a student's expected family contribution using one of the 32 need analysis systems that the Secretary has approved for that purpose in the notices published in the **Federal Register** of January 30, 1987, 52 FR 3091, and the **Federal Register** of February 26, 1987, 52 FR 5816. Similarly, in accordance with the Student Financial Assistance Technical Amendments of 1982, as amended, the cost of attendance provisions that were in effect for the 1986–87 award year will continue to apply in the 1987–88 award year.

Sections 674.14, 675.14, 676.14 Overaward.

The proposed rule would have permitted the individual to exclude certain portions of Guaranteed Student Loans (GSL) and PLUS loans from the resources that must be considered by the institution. The GSL program statute, as amended, now provides that an applicant for a subsidized GSL qualifies for that loan only if the applicant's cost of attendance exceeds his or her expected family contribution (EFC). However, the amended statute permits an applicant to use a PLUS, SLS, or a loan made under a State-sponsored or private loan program to meet this EFC requirement. The Secretary has therefore revised the proposed rule accordingly: the institution must now consider all GSL loans as resources and may substitute only these enumerated loans for the applicant's EFC. Further, to clarify the resources to be considered, this section has been revised to articulate current policy that all Title IV assistance, including Pell Grants, SEOG and other governmental grants and scholarships, are to be counted as resources.

In addition, §§ 674.14 and 676.14 provide that when an institution makes an overaward for which it is not responsible to repay, it must make a reasonable effort to recover that amount from the recipient. The Secretary regards a reasonable effort to include a written demand for repayment in which the institution notifies the recipient that he or she owes a refund of the overawarded aid and that failure to repay that amount will render the individual ineligible for further Title IV aid by virtue of section 484 of the HEA.

Conforming Changes to the CWS and SEOG Program Regulations

Sections 675.20 and 676.20 Maintenance of effort.

The maintenance of effort requirement contained in section 487 of the HEA governing the CWS and SEOG programs was eliminated when the HEA was amended by the Higher Education Amendments of 1986. Therefore, those provisions have been deleted from the regulations for both programs.

Conforming Changes to the Perkins Loan Program Regulations—Perkins Loans and Direct Loans

Changes made to Title IV–E of the HEA by the Higher Education Amendments of 1986 included changing the name of the program from the National Direct Student Loan Program to the Perkins Loan program. In addition, section 405(b) of the Higher Education Amendments of 1986 made certain provisions in the Perkins Loan program applicable only to loans made on or after July 1, 1987 to "new" borrowers. The Secretary refers to these loans in the regulations as Perkins loans and has defined a "Perkins loan" as follows:

> A loan made under Title IV–E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV–E of the HEA.

Loans made under the Perkins Loan program to other than new borrowers will continue to be known as Direct loans. The Secretary has defined a "Direct loan" as follows:

> A loan made under Title IV–E of the HEA after June 30, 1972, which does not satisfy the definition of "Perkins loan."

These definitions will be found in 34 CFR Part 668, and are therefore not included in these regulations.

Section 674.2 Definitions.

Section 464 of the HEA has been amended to provide a nine-month initial grace period for Perkins loans, and the regulatory definition of grace period has been revised. An initial grace period is a period which immediately precedes the date of first required repayment on a loan. A post-deferment grace period is a period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Section 674.9 Student eligibility.

Section 484(b) of the HEA has been amended to require each undergraduate applicant for a loan under the Perkins Loan program to secure at least a preliminary determination of his or her eligibility for a Pell Grant. Section 674.9 has been amended to include this requirement.

Section 674.10 Selection of students for loans.

Section 463 of the HEA has been amended to require that institutions agree to provide loans on a priority basis to students with exceptional needs.

Section 674.12 Loan maximums.

The maximum cumulative amounts a student may borrow have been increased under revisions to section 464(a) of the HEA and these new limits have been included in § 674.12. The maximum amount an eligible student may borrow is increased to $4,500 for a student who has not completed two academic years of study toward a baccalaureate degree, $9,000 for a student who has completed two academic years of study for a baccalaureate degree but has not received the degree, and $18,000 for study toward a professional or graduate degree, including loans borrowed for undergraduate study.

Section 674.16 Making and disbursing loans.

Section 463A of the HEA has been revised to require disclosure, at the time of disbursement, of the total cumulative balance owed by the borrower to that lender, and an estimate of the projected monthly payment for such a cumulative balance. These requirements have been added to § 674.16.

Section 674.17 Federal interest in allocated funds—transfer of Fund.

The Secretary is considering developing the capability of collecting loans directly in the event that an institution closes or no longer wants to participate in the program.

Section 674.19 Fiscal procedures and records.

The Secretary has expanded this section to clarify the manner in which Perkins Loan funds must be deposited. These funds must be invested in insured or collateralized interest-bearing bank accounts or in low-risk income-producing securities such as obligations issued or guaranteed by the United States, and the institution must exercise the level of care in making these

investments required of a fiduciary. Any bank charges incurred from depositing these funds into interest-bearing accounts may be paid from the interest earnings on these funds.

Section 674.31 Promissory note.

Section 464 of the HEA has been revised to provide for a late charge of up to 20 percent of the installment payment for costs incurred during the billing cycle for Title IV–E loans made for periods of enrollment on or after January 1, 1986 and this change has been included in § 674.31.

Section 674.32 Special terms—loans to less than half-time student borrowers.

Section 484(a) revised the limitation that a student must be enrolled on at least a half-time basis to be eligible for Title IV aid, and new § 674.32 incorporates the terms of loans to borrowers who enroll for less than half-time study. The statute has provided a specific grace period before the borrower must begin repayment on Perkins loans so that the borrower may have an opportunity to find or resume employment before bearing the burden of repayment. The Secretary has determined that borrowers who receive loans while enrolled on a less than half-time basis should receive this same benefit, and therefore, the repayment period on a loan to a borrower enrolled on a less than half-time basis begins—

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of—

(a) Nine months from the date the loan was made, or

(b) The end of a nine-month period that includes the date the loan was made and began on the date the borrower ceased enrollment as at least a half-time student at an institution of higher education or comparable institution outside the United States approved for this purpose by the Secretary.

Section 674.34 Deferment of repayment—Perkins loans.

Section 464 has been revised to add new deferments for a Perkins loan borrower:

- For a period of up to 3 years during which time the borrower is a member of the National Oceanic and Atmospheric Administration Corps;
- For a period of up to six months while the borrower is on parental leave; and
- For a period of up to 12 months for a borrower who is a mother with preschool age children and is just entering or reentering the work force and is compensated at a rate that does not exceed $1 in excess of the rate prescribed by section 6 of the Fair Labor Standards Act of 1938.

In addition, deferment previously available to a borrower who is unable to secure employment because the borrower is providing care (such as continuous nursing or other similar services) required by a spouse who is disabled was expanded to include provision of care to a disabled "dependent." The final regulation will use the term "dependent" to reflect this revision.

The Higher Education Technical Amendments of 1987 (Pub. L. 100–50, June 3, 1987) authorized a new internship deferment. Under the new provisions, a borrower may defer payment for up to two years while serving in an internship program that leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training. The current GSL regulations, 34 CFR 682.210(g), published in the **Federal Register** on November 10, 1986, and effective December 24, 1986, provide that a borrower qualifies for an internship deferment only if the internship program requires the borrower to hold at least a bachelor's degree before beginning the program, and is a program that a State licensing agency requires the borrower to complete before it will certify the individual for professional practice or service. 34 CFR 682.210(g)(1)(ii), (iii). Since publication of this regulation, the Department identified certain States that do not require the completion of medical internships as a condition for licensing or certification to practice. Because the regulation limited the internship deferment to borrowers who were serving internships required by State authority, students in these States did not qualify for internship deferments. The Department regards the enactment in June 1987 of this amendatory language in both Perkins and GSLP statutes establishing an additional internship deferment for an individual who is not required to complete an internship program before being eligible to practice as a legislative overruling of this particular limitation in GSLP regulations, and not the other limit in those regulations: Namely, that the program require at least a bachelor's degree as a prerequisite for acceptance into the program. 34 CFR 682.210(g)(1)(ii). Therefore, the Secretary has included the new internship deferment in these regulations, but continues to require that the internship require that the borrower hold at least a bachelor's degree before beginning the internship program.

These additions have been incorporated in § 674.34.

Section 674.37 Deferment procedures.

The deferment procedures proposed in the NPRM have been revised in order to simplify them and make them consistent with current Department policy regarding the effect of a default on a loan. The proposed rule permitted the institution to regard a borrower who did not make scheduled payments and did not apply for a deferment as in default on the loan, and to accelerate that loan. If the loan was accelerated, the institution could not grant a deferment for any repayments due after the date of acceleration. If the defaulted loan had not been accelerated, the institution could grant a deferment if the borrower repaid the entire past-due amount.

On September 22, 1986 the Department revised its rules regarding the effect of a default on the borrower's ability to quality for new Title IV aid. 34 CFR 674.2, 51 FR 33726. Under this revised rule, now in effect, a borrower who has failed to make a required payment is in default for purposes of determining both the default rate of the institution and the borrower's status for new aid, unless the borrower executes a new written repayment agreement for that loan. 34 CFR 674.2. The Department intended that institutions have considerable discretion over the terms of the new agreement. In order to encourage institutions to adopt those terms warranted by a borrower's repayment pattern before default, the Department urged institutions to require the defaulter to repay immediately some or all of the past-due amounts on the loan as a term of, or condition for, such a new agreement. It is important, however, that the borrower understands that once a new repayment agreement is executed, and he or she fails to make required payments when due, the loan will immediately revert to default status.

This cure procedure is available, if the institution chooses, even after a loan has been accelerated. It is consistent with that policy to permit the institution to give a deferment to a borrower after his or her loan is in default if the borrower cures the default by executing a new written repayment agreement and meets any conditions set by the institution for the agreement, such as immediate payment of some or all of those installment payments scheduled to be made before the borrower demonstrated to the institution that a condition existed that might qualify him or her for a deferment.

This revision imposes no additional burden on the borrower or the institution beyond that proposed in the NPRM, and, in fact, grants greater discretion to the institution. The Secretary intends that this final rule apply to all requests for deferment received by institutions after the effective date of this final rule, regardless of the date on which the loan was made. The Department has always regarded the availability of deferments as a matter of right only upon timely request and timely, satisfactory documentation that the borrower qualified for the deferment; neither the proposed rule nor this final rule represents any change in that policy.

The final rule also clarifies that deferments apply only after the borrower is required to begin repayment; the repayment period begins six or nine months after the borrower ceases half-time enrollment. At times a borrower may neglect to notify the institution that he or she has continued studies and remained at least a half-time student at another institution. Regardless of that failure, the borrower was not required to begin repayment until those later studies were completed. The institution holding the loan may reasonably have concluded that the repayment period on that loan had started, and may have demanded payment from the borrower. Under these circumstances, the borrower may mistakenly characterize his or her request for relief on the grounds of student status as a request for deferment, when it is actually no more than a request that the institution recognize the fact that, because the borrower had not ceased half-time enrollment status, the repayment period had not yet started. The borrower may submit proof at any time, even after a loan has been acclerated, that the repayment period on the loan began at a later date than was originally calculated, and the institution must recalculate that date upon receiving such proof from the borrower. The final rule articulates this long-standing Department interpretation that a borrower whose loan is regarded as in default has the right to the correct calculation of the start of the repayment period. However, the rule also articulates the Department's policy that the borrower remains responsible for payments that would have been due in any event, and that the institution is under no obligation to grant a deferment with regard to those past-due payments, and may immediately enforce its demand for those payments.

Section 674.57 Cancellation for volunteer service-Perkins loans.

The 1986 amendments authorize an institution to cancel up to 70 percent of a borrower's Perkins loan plus the interest on the unpaid balance for service as a volunteer under the Peace Corps Act or the Domestic Volunteer Service Act of 1973. Fifteen percent of the total principal amount of the loan plus interest on the unpaid balance may be cancelled for each of the first and second twelve-month periods of service and 20 percent may be cancelled for each of the third and fourth twelve-month periods of service.

Conforming Changes to the CWS Program Regulations

Section 675.21 Intitutional employment.

As a result of an amendment made to the HEA by the Higher Education Amendments of 1986, a proprietary institution may now employ students to work for itself. However, that employment must be "on campus," provide student services, complement and reinforce the educational program or vocational goals of the student to the maximum extent possible, and not involve the solicitation of potential students for enrollment at the proprietary institution.

The Secretary considers that student services may include furnishing academic, library, financial aid, guidance and counseling, health, and social services *directly* to students. Examples of acceptable employment would include employment as an academic tutor or peer counselor.

Section 675.23 Employment provided by a private for-profit organization.

As a result of an amendment made to the HEA by the Higher Education Amendments of 1986, each award year an institution may use up to 25 percent of its allocation to pay the Federal share of the compensation earned by its students who are employed under the CWS program by a private for-profit organization. Section 675.23 contains the conditions under which that employment may be provided.

Section 675.26 CWS Federal share limitations.

Starting with the 1989–90 award year, the Federal share of CWS compensation earned by students working for the institution, for a Federal, State or local public agency, or for a private nonprofit organization under the CWS program will be 75 percent. For award year 1990–91 and subsequent years, the Federal share of that compensation will be 70 percent.

The Secretary will, however, increase the Federal share in each of those years to 100 percent to pay the compensation of students working for other than a private for-profit organization who are enrolled in an institution that applies for that increased share in a timely manner and qualifies as an eligible institution under the Strengthening Institutions program, the Strengthening Historically Black Colleges and Universities program, or the Strengthening Historically Black Graduate Institutions program, each of which is authorized by Title III of the HEA.

The Federal share of compensation for students working for a private for-profit organization is 60 percent for award years 1987–88 and 1988–89, 55 percent for award year 1989–90, and 50 percent for award year 1990–91 and subsequent award years. In addition, the non-Federal share must be provided by the private for-profit organization.

Subpart B—Job Location and Development Programs

A second job location and development program was added to the CWS statute. This program authorizes an institution to use the lesser of 10 percent of its allocation or $20,000 to fund a community service job location and development program. Subpart B has been revised to include the statutory requirements governing this new program.

Conforming Changes to the SEOG Program Regulations

Section 676.10 Selection of students for SEOG awards.

In selecting SEOG recipients for any award year an institution must first award grants to those eligible students, including students attending less than half-time, with the lowest expected family contributions in accordance with Part F Title IV of the HEA who are also recipients of a Pell Grant for that year. The institution may then select SEOG recipients who are not recipients of a Pell Grant for that year in priority order of lowest expected family contributions.

Section 676.20 Minimum and maximum SEOG awards.

The maximum grant has been increased to $4,000 and the minimum grant has been reduced to $100.

Section 676.21 SEOG Federal share limitations.

Starting with the 1989–90 award year, the Federal share of SEOG awards an institution makes will be 95 percent of

the amount of those grants. For award year 1990–91, the Federal share will be 90 percent of the amount of those awards and for the 1991–92 and subsequent years, the Federal share will be 85 percent of the amount of those awards.

The Secretary will, however, increase the Federal share of SEOG awards in each of those years to 100 percent for any institution that applies for that increased share in a timely manner and qualifies as an eligible institution under Strengthening Institutions program or the Strengthening Historically Black Colleges and Universities program, each of which is authorized by Title III of the HEA.

Paperwork Reduction Act of 1980

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Waiver of Notice of Proposed Rulemaking

In addition to the changes made as a result of public comments, the Secretary has made certain changes to conform the regulations to changes made to the Higher Education Act of 1965 by the Higher Education Amendments of 1986, Pub. L. 99–498, and the Higher Education Technical Amendments Act of 1987, Pub. L 100–50. In accordance with section 431(b)(2)(A) of the General Education Provisions Act 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the latter changes do not implement substantive policy, but merely incorporate statutory changes made to the HEA by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. Therefore, pursuant to 5 U.S.C. 553(b)(B), the Secretary finds that publication of proposed regulations with regard to these changes is unnecessary and contrary to the public interest.

Executive Order 12291

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

Assessment of Educational Impact

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

Based on the response to the proposed rules and its own review, as discussed in the appendix, the Department has determined that the regulations in this document may require the transmission of certain information that is also being gathered by other agencies or authorities of the United States. However, the Department either does not have statutory authority to obtain this information from those agencies or authorities, or the information is not currently available in a form usable by the Department.

List of Subjects in 34 CFR Parts 674, 675, and 676

Education loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; College Work-Study Program, 84.033; Perkins Loan Program, 84.038)

Dated: November 24, 1987.

William J. Bennett,

Secretary of Education.

Summary of Comments and Responses to the Notice of Proposed Rulemaking—Parts 674, 675 AND 676—General

Section .2—Definitions—"Undergraduate Student/Graduate or Professional Student."

Comment: Many commenters requested clarification regarding the classification of students enrolled in a combined undergraduate and graduate program.

Response: A change has been made. Under the definition of an undergraduate student, a student who is enrolled in a combined undergraduate or graduate program is considered an undergraduate student for the first four years of that program.

Section .14—Overaward.

Comment: Many commenters disagreed with the provision which disallows excess earnings from CWS jobs to substitute for the expected family contribution (EFC). The commenters argued that it is illogical to allow students to substitute for EFC by increasing their debt while not allowing them to earn their EFC by working.

Response: No change has been made. A student's EFC represents an amount which the student's family is reasonably able to contribute toward his or her cost of attendance. A student is eligible for CWS employment only if the student demonstrates financial need (that is, the student's educational costs exceed the student's expected family contribution). CWS earnings may not exceed his or her demonstrated financial need. Since the EFC itself is one of the components used in determining financial need, it is illogical to allow excess earnings to be used to satisfy the EFC. Note that demonstration of financial need is not a requirement for largely unsubsidized loans such as PLUS or SLS (Supplemental Loans for Students).

Section .16—Making and Disbursing Loans: Payments to Students; and Payments of an SEOG.

Comment: Many commenters supported the proposal to delete the requirement that an institution shall get a written acceptance of the financial aid from the student. Three commenters recommended that the institution inform the students of the option to accept or deny all or part of the aid package and provide a time frame for response. Several commenters opposed this deletion stating that without a signed acceptance, students would later dispute the award, especially a loan.

Response: No change has been made. The Secretary emphasizes that before an institution makes a disbursement to a student, the institution is required to provide the student with certain disclosure information. In addition, a borrower must sign the promissory note for each advance under a Direct or Perkins loan, and each CWS payment must be made by check or similar instrument that a student must endorse in order to cash. Therefore, no further record of acceptance is necessary. If the institution is concerned that the student would later dispute that he/she did not receive the award, it is free to require that the student sign a written acceptance for each disbursement.

Comment: Many commenters opposed the proposed time frame of advancing payments of SEOG and Direct/Perkins loans in §.16. The reasons cited were (1) the proposal does not recognize educational expenses which are incurred before the beginning of the period of instruction; (2) the proposal will lead to a large number of overpayments; and (3) should a student withdraw, the grace period would begin and the institution's refund policy would apply any amount toward the student's outstanding principal. Several commenters recommended that each institution be allowed the flexibility of

crediting accounts to accommodate its own billing system.

Response: No change has been made. Under the previous regulation, an institution could disburse an SEOG or Perkins loan only at the beginning of our within a payment period (first day of classes). These regulations give greater flexibility to institutions regarding the disbursement of SEOG and Perkins loans and are consistent with the long-standing Pell Grant program policy of allowing an institution to advance funds directly to a student ten days before the beginning of classes and to credit a student's institutional account three weeks before the first day of classes. They accommodate the need of a student to pay educational expenses incurred before the beginning of a period of instruction.

If the institution chooses to exercise its right to make advance payments, it must accept the responsibility from any resulting overpayment. Therefore, should a student withdraw before the first day of classes, all monies disbursed are considered to be an overpayment and must be restored to the relevant program account.

Comment: Numerous commenters disagreed with the proposal in § 675.16 that the institution shall not obtain a student's power of attorney to authorize any disbursement of funds or crediting of funds to a student's accounts. Most of these commenters cited the large number of students in their overseas international programs and stated that mailing checks instead of crediting the accounts is unduly cumbersome and hazardous and would cause delays to the aid recipients. Some commenters also cited instances in which students are studying in off-campus programs that may be a great distance away. One suggestion that was made to change "shall not obtain" to "shall not hold." Most of the recommendations were to include an "exceptional conditions" clause that would allow institutions to obtain a student's power of attorney for students studying abroad or at a great distance. One commenter noted that "waiver of endorsement" authority is available, and stated that the student should have the choice between the use of that waiver and a power of attorney.

Response: A change has been made. In order to accommodate unusual circumstances, the regulation has been revised to allow the institution to obtain a student's power of attorney for purposes of authorizing disbursements of funds only after obtaining the Secretary's approval.

Section .19—Fiscal Procedures and Records.

Comment: Numerous commenters objected to the proposal in § .19 which requires the institution to maintain the source documents in hard copy or on microfilm. The commenters believe this negates the progress already made in electronic record-keeping. Hard copies of microfilm back-ups are not required in private industry for audit purposes. Other commenters suggested that "source documents" be changed to "promissory notes" and "microfilm" be changed to "microforms" in order to include other methods of storage.

Response: A change has been made. Except as specifically noted in the rule to the contrary (e.g., loan documentation) institutions will not be required to maintain source records in their original form, but may retain this information in either hard copy of microforms.

Public Comments and Departmental Responses Relating to Part 674 (Perkins Loan)

Section 674.8—Program Participation Agreement.

Comment: Many commenters objected to the proposal in § 674.8 requiring the institution to restore to the Fund the outstanding principal balance, accrued interest, and any administrative cost allowance it received if the institution improperly disbursed the loan or failed to exercise due diligence in its collection. The commenters recommended that repayment be required only when a financial loss to the Government occurs and stated that repaying the administrative cost allowance taken on these awards would be administratively burdensome. One of these commenters suggested that a 3% allowable error and omissions rate be allowed. Also, the commenters suggested there is no due process allowed before the institution is required to return the funds.

Response: A change has been made to clarify the intent of the rule. The subject of institutions restoring monies to the Fund has been clarified and moved to § 674.13—Reimbursement to the Fund. The Secretary intends by this rule to require the institution to restore amounts lost to the Fund because of the conduct of the institution or its agents. The relationship of the institution to the Fund has long been characterized by the Department as a trust relationship. This rule applies to that relationship traditional principles governing the responsibility of trustees for losses of trust assets caused by their acts or omissions. As such, the rule codifies existing Department views on the consequences of that responsibility, but does not adopt any new principle or create any new ground of liability.

Under these principles, the institution as trustee is responsible for restoring to the trust those funds used in violation of the directions of the party establishing the trust, the Department. Section 674.13(a)(1) addresses the institution's responsibility with regard to those loans or portions of loans which the borrower was not eligible to receive. These disbursements include overawards caused by a failure to review information available to the institution, such as other aid awarded to the individual in excess of need. *See also* 34 CFR 674.14(c)(2). The institution is likewise responsible, under this principle, for loans to individuals who were not eligible for a loan if the institution should have discovered that fact by a review of information in its own records, such as records regarding academic progress, repayment status on prior loans held by the institution, and immigration status.

The institution as trustee is also responsible for exercising reasonable care in making loans and due diligence in attempting to enforce the loans. Section 674.13(a)(2) addresses the institution's responsibility with regard to loans that it made in the proper amount to eligible borrowers, but on which it failed to exercise due care in collecting. The revised rule recognizes that for these loans, financial loss to the Fund occurs only in the event of default, and requires the institution to restore to the Fund that full unpaid portion of the loan with regard to which the institution failed to exercise reasonable care in disbursing, recording, or attempting to collect. The institution receives no credit for the institutional share of the uncollectable loan under this provision precisely because it had committed that ICC to the Fund for future lending; the loss to the Fund includes the share of the uncollected loan derived from the ICC, and the institution as trustee is required to compensate the Fund for the loss. For example, the institution is responsible, under this principle, for that portion of a loan evidenced by a promissory note that was altered, unsigned, or lost, or which lacked borrower acknowledgment of all advances of loan funds. If the institution uses a note that incorporates the repayment schedule, the institution likewise makes itself responsible for due care in executing and retaining that schedule.

The rule also regards a failure to comply with the regulatory collection

requirements as a cause of the loss to the Fund on an outstanding defaulted loan. Examples of failures to exercise due diligence include any failure to take the following actions in a timely and effective manner: To skip trace promptly, to engage a collection firm, to sue a gainfully employed or otherwise solvent debtor, to report to a credit bureau, or oppose an undue hardship petition in bankruptcy when such opposition is well-grounded and cost-effective.

In some instances, the connection between the institution's conduct and the loss on the loan is fairly clear. For example, the causal connection is reasonably clear where the institution does not sue a gainfully employed debtor whom the institution or its agent had located and whom it could have sued, and the applicable statute of limitations later runs so as to preclude effectively subsequent attempts to collect by lawsuit. Because the failure to sue here is so directly related to the lack of recovery, there is little reason for not holding the institution liable for the loss. On the other hand, a lack of causal connection may be equally clear in other circumstances. For example, if the institution failed to sue a gainfully employed debtor and the statute of limitations ran out on the debt, there is clearly a loss to the Fund. However, if the institution was now able to show that this debtor, at the time suit should have been brought, received a discharge of the loan in a Chapter 13 bankruptcy proceeding which made no provision for any payments on consumer debt, it would thereby demonstrate that the loss to the Fund was clearly caused by the bankruptcy and not its failure to sue. The institution under these circumstances would have no liability to the Fund under § 674.13(b)(1)(ii).

The Secretary recognizes that in many cases, the loss on a defaulted loan can be neither clearly attributed to, nor disassociated from, the failure of the institution to exercise due diligence in collection. For example, if the defaulting borrower moves without providing the institution with his or her forwarding address and the institution does not attempt promptly to trace the borrower, a loss to the Fund has occurred, but there any be several causes for that loss. To resolve questions of causation in these unclear cases, the Secretary considers it fair and practical to use a rebuttable presumption that losses that occur on loans not diligently collected were caused by that failure to attempt collection. The institution, and not the Department, had assumed responsibility for using due diligence in collecting the loan, and was and continues to be in a better position to know or discover the actual cause of its inability to collect the loan. The Secretary therefore considers it reasonable to place on the institution the burden of rebutting the conclusion that the loss would not have occurred if the institution had complied with its collection responsibilities under Federal regulations. § 674.13(b)(1)(ii). For example, an institution might show that its failure to begin skip-tracing while the borrower's trail was fresh was not the cause of the loss by demonstrating, through later investigation, that the borrower after his or her move was not gainfully employed during the period in which the institution might have brought suit to enforce the debt.

The presumption created in § 674.13(b)(1), that the loss to the Fund resulted from the act or omission of the institution, may also be rebutted as provided in this section by demonstrating that the loss was ultimately cured completely, by subsequent recovery from the borrower or consigner, or partially, by securing a judgment for the full amount outstanding on the loan. § 674.13(b)(1)(i)(2). The rule provides that the institution must demonstrate, to the satisfaction of the Secretary, that the loss was not caused by its failure to exercise due diligence. In deciding whether an institution has met that burden of proof in individual cases, the Secretary will take into account the extent to which the institution failed to follow the prescribed due diligence requirements.

If the institution reimburses the Fund under this section, it thereby acquires title to the loan in question in its own name, and not as trustee of the Fund, and may retain for its own account any amount later collected on that loan. The institution must restore to the Fund the outstanding balance of the loan in question, including any portion attributable to the institutional contribution to the Fund.

In response to the comment that this rule denies the institution due process, the Secretary notes that any action taken by the Department to enforce the requirements of § 674.13 wil arise as a result of audits or program reviews of the institution, and as such will be subject to an administrative review and an opportunity for a hearing under the provisions of section 487 of the HEA. In addition, the Secretary believes that adoption of a specific percentage of losses as "allowable" is not a prudent step for several reasons. No legal basis is apparent for such a prospective forgiveness of liability, and it appears that such a tolerance might have the effect of lessening collection efforts.

Comment: Many commenters strongly opposed the mandatory inclusion of the word "Federal" in § 674.19(a) for identifying an account in which Federal funds are deposited. The commenters cite added cost and confusion of check printing and disbursements. Commenters from State institutions stated they could not comply with this proposal because of dealing with State Treasuries. In addition, numerous commenters objected strongly to the proposed regulation requiring an institution to keep its NDSL and Perkins loans fund cash in a separate account. Many of these commenters cited the undue administrative burden and the cost of maintaining the account. Other commenters suggested that the requirement of a separate account should be mandated on an individual basis for those institutions that did not maintain acceptable accounting practices.

Response. A change has been made. The Secretary has deleted the requirement that the institution include the name "Federal" in the name of the account. However, this final rule continues to provide that institutions must either notify the bank in writing of the Federal character of the account, or include that phrase in the name of the account. However, to further clarify the nature of the funds on deposit in Title IV program accounts, the Secretary has added language to this section to establish more clearly that character.

First, the rule now articulates what has always been clear under the statute and Department policy: Title IV funds may be used by the institution only for program purposes. See 20 U.S.C. 1094(a)(1). The sum of the Title IV funds on deposit in the institution's accounts must therefore always at least equal the amount of those funds it has received but not yet spent on program purposes. § 674.19(a)(3)(i). By accepting these funds from the Department, moreover, the institution accepts a fiduciary responsibility for these funds; under traditional common law principles, the institution that depletes these accounts containing Title IV funds is deemed to make any subsequent deposits of institutional funds into these accounts with the intention of restoring to the depleted accounts trust funds previously illegally withdrawn. The Secretary recognizes that such restorative deposits are commonly made by institutions with specific intent that the restored funds become Title IV funds, and that such funds be used for disbursement to students. Indeed, the Department has,

over the years, directed institutions to satisfy liabilities for misspent funds by depositing in these Title IV accounts the amount of institutional funds that would otherwise have been paid over to the Department to satisfy its claim.

The Secretary under this rule places no additional burden on the institution, which was already under a legal obligation to restore improperly withdrawn Title IV funds; rather, the purpose of this rule is to make clear that the Secretary—and the institution—regard these non-Federal funds deposited to depleted Title IV accounts to become part of the Title IV trust funds which the institution holds as fiduciary. These funds therefore become, as part of the trust fund, immune from attachment by third parties to the same extent as the Federal advances they replaced. The Secretary also agrees that only those institutions that do not maintain acceptable accounting practices should be required to maintain funds in a separate Direct/Perkins account. The regulation has been modified accordingly.

Section 674.31—Promissory note.

Comment: Several commenters objected to the provision that the promissory note be limited to either one piece of paper (front and back) or be multiple pages with the borrower's signature on each page. The commenters believed that this is a cumbersome practice that would only increase clerical error and workload. The commenters suggested the use of a multiple page document using the format "page one of five, page two of five, * * *"

Response: A change has been made. The Secretary has added to the final regulations the alternate provision suggested by the commenters allowing a multiple page promissory note, listing the total number of pages in the note as well as the number of each page.

Comment: One commenter encouraged the Department to require co-signers on every Perkins Loan Promissory note as an aid to collection.

Response: No change has been made. Section 464 of the HEA forbids use of an endorser unless the borrower is a minor and the note would not, for that reason, constitute an enforceable obligation under local law. An institution that requires a cosigner, however, must ensure that the obligation of the cosigner or endorser is itself legally enforceable.

Comment: One commenter suggested that a final provision be added to the promissory note section that states that the lending institution should secure the borrower's permission before sending any information about the borrower's account to a credit bureau. The commenter feared that the proposed requirement would violate the general provision in the Family Education Rights and Privacy Act (FERPA).

Response: No change has been made. The Secretary has interpreted 20 U.S.C. 1232g(b)(1)(D), and in particular 34 CFR 99.31(a)(4)(iv), to permit the disclosure of information regarding default on a Perkins (NDSL) loan to credit bureaus. These provisions of FERPA and regulations permit the institution to disclose information contained in the student's educational record without the student's consent if the disclosure is necessary for enforcement of the terms of financial aid which the student has received; reporting the default to a credit bureau is clearly authorized by this authority.

Comment: One commenter suggested changing the language of the sample promissory note that addresses the consequences to the borrower of default and of acceleration of the loan. The commenter suggested that the note should read that the borrower "will lose" deferment or cancellation benefits for service performed after the institution accelerates the loan.

Response: A change has been made. The Secretary has changed the promissory note according to these provisions as adopted in this final rule.

Comment: Three commenters stated that for clarity and simplicity a standard $2 per month penalty charge should be used regardless of the frequency with which the borrower is billed.

Response: A change has been made. Recent statutory changes in the Higher Education Amendments of 1986 have replaced the late charge based on specific dollar charges for each late installment ($1 for the first month, $2 for each month or part of a month thereafter, if repayments are made on a monthly basis, and $3 or $6 for each interval or part thereof for bimonthly or quarterly repayment intervals), with a late charge provision that requires the institution to assess a late payment charge on each late payment, based on the costs of performing activities required in Subpart C of these regulations for the billing cycle (*See:* § 674.44), as long as the total charges do not exceed 20 percent of the amount of the borrower's monthly, bimonthly or quarterly payment. Section 674.31(b)(5) of the final regulations has been amended to read accordingly.

Comment: One commenter suggested the elimination of § 674.31(b)(2) which gives the borrower the option of having graduated installments at his or her request. The commenter suggested that the decision to allow graduated installments should be entirely that of the institution.

Response: No change has been made. The Secretary believes that keeping a borrower in repayment status is a more important objective than requiring equal payments. If a borrower requests a graduated repayment schedule, it is indicative that the borrower intends to repay the loan.

Comment: One commenter stated that the timely filing of cancellation and deferment requests should be clearly stated as a borrower responsibility.

Response: A change has been made. The Secretary agrees with the commenter and the note has been changed accordingly.

Comment: One commenter suggested that Perkins loans be reported to credit bureaus and have their status updated on a monthly basis. Another commenter asked if the IRS tax offset provision should be included in the note.

Response: No change has been made. The Secretary has interpreted FERPA and its implementing regulations, especially 34 CFR 99.31(a)(4)(iv), to permit reporting delinquent or defaulted loans to credit bureaus without the borrower's consent. An institution that wishes to report other loans to credit bureaus may do so only with the consent of the borrower. An institution must report, according to the reporting procedures of the bureau, any changes in account status. The Federal income tax refund offset program is only a pilot program at present, and for that reason it is premature to include notice of this collection tool among routine disclosures.

Comment: One commenter felt that an institution should be allowed to recover all of the costs of collection—either from the NDSL revolving fund or directly from a defaulted borrower. The commenter advocated the deletion of the 25 percent limitation on contingent fee charges by collection firms that may be assessed against the borrower.

Response: A change has been made. In the past, an institution that used a collection firm and intended to pass on to the debtor the cost incurred in paying the collection firm was directed to include in the promissory note a provision specifying that the amount charged the borrower would not exceed 25 percent of the outstanding principal and interest due on the loan. This direction was based on an interpretation by staff of the Federal Trade Commission (FTC) that section 808 of the Fair Debt Collection Practices Act required a specific identification of the type and amount of such charges. The FTC has since revised this position (45

FR 8027, March 7, 1986) and the Department has removed this provision from the model promissory note. Section 484A of the Higher Education Act, added by Pub. L. 99–272, clarifies the consequences of default as subjecting the defaulting borrower to liability for reasonable collection costs, in addition to other charges specified in the law, such as late charges. Final regulations for Subpart C of this part will address this issue of recovery from the debtor of the costs of collection.

Section 674.33—Repayment.

Comment: Several commenters remarked that proposed § 674.32(b) which addressed "minimum repayment rates" was unclear and unnecessarily complex. These commenters felt that institutions should be permitted to use a general pro rata concept when determining how much each account should be repaid. These commenters were also of the opinion that paragraph (b) is inconsistent with the intent of the statute because requiring minimum repayments to be made on one loan while another is deferred deprives the borrower of the benefit of the grace period or deferment prescribed by the statute.

Response: No change has been made. The minimum repayment rates and the deferment provisions are dictated by statute and therefore cannot be changed. See § 674.33(b).

Comment: Three commenters expressed the opinion that notifying the Secretary of all loans that were being extended past the standard ten-year repayment period served no useful purpose. Two commenters suggested that such extensions only be reported on the Fiscal Operations Report and Application to Participate in the campus-based programs (FISAP). One commenter was opposed to granting any extension in the repayment period due to a borrower's low income.

Response: A change has been made. The Secretary agrees with the comment that notifying the Department of all loans that have been extended beyond the ten-year repayment period is an unnecessary institutional burden. The authority to extend the borrower's repayment period remains with the institution.

Section 674.34—Deferment of Repayment—Perkins loans.

Section 674.35—Deferment of Repayment—Direct loans made on or after October 1, 1980.

Comment: There were fifteen comments relative to the internship deferment provision. Two commenters believed the Secretary should not continue to require a bachelor's degree. One commenter stated that the specificity of the proposed provision would be beneficial to the institution in making its decision on a request for deferment. However, all of the other respondents believed that the new requirements were burdensome, time-consuming and of little benefit.

Response: No change has been made. This requirement conforms with all Title IV statutory and program provisions for internships.

Comment: One commenter requested more specificity regarding when a grace period begins and ends. The inquirer felt there was confusion between date-specific or month-specific interpretations.

Response: No change has been made. Section 464 provides that the repayment period begins nine months after the date on which the borrower ceases to be enrolled as at least a half-time student. The grace period is between these two dates. It is determined by specific dates, and cannot be rounded to approximations coinciding with calendar months.

Section 674.37—Deferment Procedures.

Comment: A wide range of comments were received on this section. One respondent was confused by the options available to the institution when a note has not been accelerated. Another commenter questioned if the borrower must pay the amount in default before he or she may be granted a deferment. Another commenter wanted the institution to retain options because it provided leverage needed to collect some loans. Two other commenters believed that this regulation would be unfair to borrowers whose deferments were not processed through no fault of the borrower. They also expressed the concern that the regulation would be a deterrent to accelerating any loans. Four commenters believed that not calculating the interest had little or no significance except to place an additional costly administrative burden on institutions.

Response: A change has been made. Section 674.37 has been re-written to clarify deferment procedures. To qualify for a deferment on a loan, a borrower must submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, and must do so by the date that the institution establishes.

After a loan is in default, the institution may, at its discretion, grant a deferment if the borrower signs and complies with a new repayment agreement on the loan. The institution may do so even after it accelerates the defaulted loan. An institution may in these cases insist that the borrower immediately repay some or all of the amounts previously scheduled to be repaid before the date on which the institution made its determination that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs. Institutions are not required to grant deferments on loans in default; however, if they do so, by securing a new agreement, there is no reason to forego the recovery for the Fund of the accrued interest on that loan. If the institution regards the calculation of past-due, accrued interest as unduly burdensome, it may deny deferments on a defaulted loan.

Public Comments and Departmental Responses Relating to Part 675 (CWS)

Section 675.8—Program Participation Agreement.

Comment: A few commenters noted that the requirement in § 675.8(c) that the institution make non-CWS institutional jobs reasonably available to the extent of available funds is more restrictive than the statute. The regulation uses the phrase "* * * non-CWS institutional jobs * * *" but the statute states "* * * equivalent employment offered or arranged * * *." These commenters recommended that the regulation be changed to conform with the statute.

Response: A change has been made. The Secretary agrees with the commenters and § 675.8 has been rewritten to conform with the statute.

Section 675.18—Use of funds.

Comment: Two commenters objected to the proposed requirement in § 675.18 that before an institution may spend its current year CWS allocation, it shall spend any funds carried forward from the previous year. The commenters stated that the requirement would be administratively burdensome because institutions commingle such funds with current year funds and it would be difficult for an institution to demonstrate which funds were used first.

Response: No change has been made. An institution must spend any funds carried forward from the previous year before spending its current year CWS allocation. The Secretary has the authority to reallocate unused current year CWS funds to other institutions. Therefore, to identify accurately the amount of such unused current year funds, it is necessary for institutions to spend first those funds carried forward

from the previous year. Further, the Department of Education may not commingle different CWS annual appropriations in its accounting system, by law; therefore these funds must also be reported separately by the institution.

Section 675.19—Fiscal Procedures and Records.

Comment: Many commenters objected to the proposed rule in § 675.19 which would require the institution to maintain a time record in clock time sequences. Most of these commenters cited increased administrative burden on institutions, prohibitive costs (redesigning time-cards, time sheets, and systems), and the difficulty for State-administered institutions to comply due to standardized forms and procedures for State employees. Many of them stated that this method is more prone to error and will lead students to falsify records. Some commenters recommended that this rule may be necessary only for certain institutions where audits have uncovered flagrant abuse of the present method.

One commenter agreed that the proposal was appropriate, but stated that several months would be required to implement it because of the changes necessary in financial aid offices and payroll systems.

Response: A change has been made. In order to complement existing payroll processes, the Secretary has revised the requirement to provide that the certification must contain, or be supported by, time records in clock-time sequence.

Section 675.21 (§ 675.21 in NPRM)—Institutional employment.

Comment: Two commenters suggested that the areas of contracted services for CWS employment in other than proprietary institutions should be expanded. The commenters stated that the wording "such as food, service, cleaning, maintenance or security" makes it unclear as to whether other areas are allowed.

Response: No change has been made. The regulation lists the most common examples of areas of contracted services to which CWS students may be employed.

Comment: One commenter objected to the wording of § 675.21(d)(2), specifically the statement "The institution may enter into an agreement ONLY with a reliable agency * * *." The commenter suggested the deletion of the word "reliable" because it is judgmental and unnecessary.

Response: A change has been made. The Secretary recognizes the judgmental nature of the word "reliable" and has deleted this word. The reference to the agreement between institutions and organizations has been moved to § 675.20(b) of the final regulations.

Comment: A few commenters supported the rule proposed in § 675.21(d)(4)(ii) that states that the employer may be required to pay such costs as the employer's share of social security or workers' compensation; however, the commenters expressed concern that the regulation does not state *when* an employer must pay such costs.

Response: No change has been made. In an effort to allow institutional flexibility, the Secretary does not regulate when an employer must pay these costs. The decision as to which entity pays these costs will be contained in the agreement between the institution and the employing agency.

Section 675.23 (Previously 675.24)—CWS Federal share limitations.

Comment: Many commenters objected and expressed concern about the proposal to delete the option which allows an institution to refund excess funds to an off-campus employer when the institution receives more money from the employer than is required to pay the non-Federal share of wages and the administrative costs. The commenters argued that this proposal could jeopardize the willingness of some off-campus employers to participate in the CWS program and to deposit sufficient funds to meet institutional payroll requirements. They also stated that the accounting procedures would be difficult, since the excess funds would have to be carried from one fiscal year to the next.

Response: A change has been made. The Secretary agrees with the commenters and the option will remain in the regulations.

The Secretary amends Parts 674, 675, and 676 of Title 34 of the Code of Federal Regulations as follows:

PART 674—PERKINS LOAN PROGRAM

1. The authority citation for Part 674 is revised to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429 unless otherwise noted.

1a. The Part heading and Note and Subparts A (consisting of §§ 674.1 through 674.20), B (consisting of §§ 674.31 through 674.39), and D (consisting of §§ 674.51 through 674.60) of Part 674 of Title 34 of the Code of Regulations are revised to read as follows, and Appendices A, B, and C are revised, and Appendices D and E are added to read as follows:

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

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Subpart A—General Provisions

§ 674.1 Purpose and identification of common provisions.

(a) The Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs.

(b)(1) The Perkins Loan Program authorized by Title IV–E of the Higher Education Act of 1965 and previously named the National Direct Student Loan Program is a continuation of the National Defense Student Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV–E continue to exist.

(2) The Secretary considers any student loan fund established under Title IV–E to include the assets of an institution's student loan fund established under Title II.

*(c) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(d) Provisions in these regulations that refer to "loans" or "student loans" apply to all loans made under Title IV–E of the HEA or Title II of the National Defense Education Act.

(Authority: 20 U.S.C. 1087aa-1087hh; Pub. L. 92–318, sec. 137(d)(1))

§ 674.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
College Work-Study (CWS) Program
Defense loan
Direct loan
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan (ICL) Program
National Defense Student Loan Program
National Direct Student Loan (NDSL) Program
Pell Grant Program
Perkins loan
Perkins Loan Program
PLUS Program
Secretary
SLS Program
Supplemental Educational Opportunity Grant (SEOG) Program

(b) The Secretary defines other terms used in this part as follows:

Default: The failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement.

Default rate: Represented as a fraction:

$$\frac{\text{Defaulted principal amount outstanding}}{\text{Matured loans}}$$

Defaulted principal amount outstanding: (1) The total loan amount borrowed from an institution's Fund that has reached the repayment stage on those loans that are—

(i) Repayable monthly and in default at least 120 days; or

(ii) Repayable less frequently and in default at least 180 days; minus

(2) That portion of these loans that have been—

(i) Repaid or cancelled;

(ii) Referred to the Secretary;

(iii) Assigned to the Secretary;

(iv) Discharged in bankruptcy; and

(v) Subject to a satisfactory written repayment agreement with which the borrower is currently in compliance.

**Expected family contribution (EFC):* The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

Federal capital contribution (FCC): Federal funds allocated or reallocated to an institution for deposit into the institution's Fund under section 462 of the HEA.

**Financial need:* The difference between a student's cost of attendance and his or her EFC.

**Full-time student:* An enrolled student who is carrying a full-time academic workload (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarters system.

(2) 24 semester hours or 38 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

Fund (Perkins Loan Fund): A fund established and maintained according to § 674.8.

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic workload as determined by the institution according to its own standards and practices.

Half-time undergraduate student: An enrolled undergraduate student who is carrying a half-time academic workload, as determined by the institution, which amounts to at least half the workload of a full-time studnet. However, the institution's half-time standards must equal or exceed the equivalent of one or more of the following minimum requirements:

(1) 6 semester hours or 6 quarter hours per academic term for an institution using a standard semester, trimester, or quarter system.

(2) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than one year.

(3) 12 clock hours per week for an institution using clock hours.

(4) 12 hours of preparation per week for a student enrolled in a program of study by correspondence. Regardless of the workload, no student enrolled solely

in correspondence study is considered more than half-time.

Initial grace period: That period which immediately follows a period of enrollment and immediately precedes the date of the first required repayment on a loan. This period is generally nine months for Perkins loans, Defense loans, and Direct loans made before October 1, 1980, and six months for other Direct loans.

**Institution of higher education (institution):* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Institutional capital contribution (ICC): Institutional funds contributed to establish or maintain a Fund.

Matured loans: The total principal amount of all loans made to students from an institution's Fund minus the principal amount of loans made from the institution's Fund to students who—

(1) Are enrolled as at least half-time students; or

(2) Are still in their first grace period.

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

Post-deferment grace period: That period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Student loan: For this part means a Direct Loan, Defense Loan, or a Perkins Loan.

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(Authority: 20 U.S.C. 1087aa–1087hh)

***§ 674.3 Application.**

(a) To participate in the Perkins Loan Program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation or reallocation of the Perkins Loan Program funds under section 462 of the HEA.

(Authority: 20 U.S.C. 1087bb)

§ 674.4 Allocation and reallocation.

(a) The Secretary allocates Federal capital contributions to institutions participating in the Perkins Loan program in accordance with section 462 of the HEA.

(b) The Secretary reallocates Federal capital contributions to institutions participating in the Perkins Loan program in a manner that best carries out the purpose of section 462 of the HEA.

(c) As used in section 462 of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.

(2) Business.

(3) Trade/Technical.

(4) Art Schools.

(5) Other Proprietary Institutions.

(6) Non-Proprietary Institutions.

(d) *Payment to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(Authority: 20 U.S.C. 1087bb)

§§ 674.5—674.7 [Reserved]

§ 674.8 Program participation agreement.

To participate in the Perkins Loan program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR Part 668. The agreement further specifically provides, among other things, that—

(a) The institution shall establish and maintain a Fund and shall deposit unto the Fund–

(1) FCC received under this subpart;

(2) ICC equal to at least one-ninth of the FCC described in paragraph (a)(1) of this section;

(3) Payments of principal, interest, late charges and collection costs on loans from the Fund;

(4) Payments to the institution as the result of loan cancellations under section 465(b) of the Act;

(5) Any other earnings on assets of the Fund, including the interest earnings of the funds listed in paragraphs (a)(1) through (4) of this section net of bank charges incurred with regard to Fund assets deposited in interest-bearing accounts; and

(6) Proceeds of short-term no-interest loans made to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for—

(1) Making loans to students;

(2) Administrative expenses as provided for in § 674.18(b);

(3) Capital distributions provided for in section 466 of the Act;

(4) Litigation costs (see §674.47);

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and late charges on a loan made from the Fund (see § 674.47); and

(6) Repayment of any short-term, no-interest loans made to the Fund by the institution in anticipation of collections or receipt of FCC.

(c) The institution shall submit an annual report to the Secretary containing information about loans in default—

(1) 120 days or more for loans repayable in monthly installments; or

(2) 180 days or more for loans repayable in less frequent installments.

(d)(1) If an institution determines not to service or collect a loan, the institution may assign its rights to the loan to the United States without recompense at the beginning of a repayment period; or

(2) If a loan is in default despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The institution shall provide the loan information required by section 463A of the HEA to a borrower.

(Authority: 20 U.S.C. 1087cc, 1087cc–1, 1094)

§ 674.9 Student eligibility.

A student at an institution of higher education is eligible to receive a loan under the Perkins Loan program for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution;

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order–

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members;

(d) Has received for that award year, if an undergraduate student—

(1) A SAR as a result of applying for a grant under the Pell Grant Program; or

(2) A preliminary determination of eligibility or ineligibility for a Pell Grant by the institution's financial aid administrator after applying for a SAR with a Pell Grant Processor; and

(e) Is willing to repay the loan. Failure to meet payment obligations on a previous loan, including a loan discharged in bankruptcy, is evidence that the student is unwilling to repay the loan.

(Authority: 20 U.S.C. 1087dd and 1091)

§ 674.10 Selection of students for loans.

(a)(1) An institution shall make loans under this part reasonably available, to the extent of available funds, to all students eligible under § 674.9 but shall give priority to those students with exceptional financial need.

(2) The institution shall define exceptional financial need for the purpose of the priority described in paragraph (a)(1) of this section and shall develop procedures for implementing that priority.

(b) If an institution's allocation of FCC is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall, consistent with the requirements of paragraph (a) of this section, award a reasonable proportion of its allocation to those students.

(c) The institution shall establish selection procedures and these procedures must be—

(1) In writing;

(2) Uniformly applied; and

(3) Maintained in the institution's files.

(Authority: 20 U.S.C. 1087cc and 1087dd)

§ 674.11 [Reserved]

§ 674.12 Loan maximums.

The cumulative maximum amount of Defense Loans, Direct loans and Perkins loans an eligible student may borrow is—

(a) $4,500 for a student who has not completed 2 academic years of study toward a bachelor's degree;

(b) $9,000 for a student who has completed 2 academic years of study toward a bachelor's degree and has achieved third-year status but has *not* received the degree; and

(c) $18,000 for study toward a professional or graduate degree.

(d) The maximum amounts listed in paragraphs (a), (b) and (c) of this section include any amount borrowed previously under Title IV–E of the HEA at any institution, regardless of any amounts that may have been repaid to the Fund at any institution.

(Authority: 20 U.S.C. 1087dd)

§ 674.13 Reimbursement to the Fund.

(a) The Secretary requires an institution to reimburse its Fund in an amount equal to that portion of the outstanding balance of—

(1) A loan disbursed by the institution to a borrower in excess of the amount that the borrower was eligible to receive, as determined on the basis of information the institution had, or should have had, at the time of disbursement; or

(2) Except as provided in paragraph (b) of this section, a defaulted loan with regard to which the institution failed—

(i) To record or retain the loan note in accordance with the requirements of this part;

(ii) To record advances on the loan note in accordance with the requirements of this part; or

(iii) To exercise due diligence in collecting in accordance with the requirements of this part.

(b) The Secretary does not require an institution to reimburse its Fund for the portion of the outstanding balance of a defaulted loan described in paragraph (a)(2) of this section—

(1) That the institution—

(i) Recovers from the borrower or endorser; or

(ii) Demonstrates, to the Secretary's satisfaction, would not have been collected from the borrower or endorser even if the institution complied in a timely manner with the due diligence requirements of Subpart C of this part; or

(2) On which the institution obtains a judgment.

(c) An institution that is required to reimburse its Fund under paragraph (a) of this section shall also reimburse the Fund for the amount of the administrative cost allowance claimed by the institution for that portion of the loans to be reimbursed.

(d) An institution that reimburses its Fund under paragraph (a) of this section thereby acquires for its own account all the right, title and interest of the Fund in the loan for which reimbursement has been made.

(Authority: 20 U.S.C. 1087dd–1087hh)

***§ 674.14 Overaward.**

(a) *Overaward prohibited.* *(1) An institution may only award or disburse a Direct loan or a Perkins loan to a student if that loan, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing a Direct loan or a Perkins loan to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards loan funds to the student;

(ii) Makes available to its students; or

(iii) Knows about.

(3)(i) If a student receives additional resources before the institution advances the loan, and the total resources including the loan exceed the student's need, and the excess is not from employment, the overaward is the amount that exceeds need.

*(ii) If a student receives additional resources after the institution advances the loan, and the total resources including the loan exceeds the student's need by $200 or more and the excess is not from employment, the overaward is the amount that exceeds $199.

*(4) If a student earns more money from employment than the institution anticipated or could have reasonably anticipated when it awarded or disbursed the loan, the institution shall treat the earnings in accordance with paragraph (d) of this section.

*(b) *Resources.* (1) The Secretary considers that "resources" include but are not limited to any—

(i) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Students Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowship or assistantship;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from employment other than CWS employment for the period of the award except as provided in 34 CFR 675.25; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource any portion of the resources described in paragraph (b)(1) of this section that are included in the student's EFC.

(3) The student may use Supplemental Loans for Students (SLS), State-sponsored or private loans, PLUS loans, or non-need-based ICLs to substitute for his or her expected family contribution. However, if the sum of the loan amounts received exceeds the student's expected contribution, the excess is a resource.

(c) *Liability for and recovery of overpayments.* (1) The student is liable for any overpayment of loan advances made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because it failed to follow the procedures set forth in this part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan Fund even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recovery the overpayment by making a reasonable effort to contact the student and recover the overpayment.

The Secretary regards a written demand to the student for repayment of the overawarded funds, with notice that failure to make that repayment will render the student ineligible for further Title IV aid, to constitute such a reasonable effort.

*(d) *Treatment of earnings in excess of need.* An institution shall take the following steps when it learns that a student has earned, or will earn, an amount that when combined with other resources is $200 or more over his or her financial need:

(1) The institution shall decide whether the student has increased financial need unanticipated when it awarded financial aid to the student. If the student does, and the student's earnings plus other resources do not exceed this increased need by $200 or more, no further action is necessary.

(2) If the student's earnings plus other resources still exceed need by $200 or more after the institution subtracts any additional costs, it shall cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $199.

(3) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (d) (1) and (2) of this section, and the student is enrolled for the next academic year, the institution shall consider the amount that exceeds $199 as a resource to help pay the student's cost of attendance in the following year.

(4) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in paragaphs (d) (1) and (2) of this section, and the student is not enrolled for the next academic year, no further action is necessary.

(Authority: 20 U.S.C. 1087dd, 1087hh)

***§ 674.15 Coordination with BIA grants.**

(a) To determine the amount of a loan for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA/eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1087dd)

§ 674.16 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the student with the following information:

(i) The name of the institution and the address to which communications and payments should be sent.

(ii) The principal amount of the loan.

(iii) The stated interest rate on the loan.

(iv) The yearly and cumulative maximum amounts that may be borrowed.

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan.

(vi) The minimum and maximum repayment terms which the institution may impose and the minimum monthly repayment required.

(vii) A statement of the total cumulative balance owed by the student to that institution, and an estimate of the monthly payment amount needed to repay that balance.

(viii) Special options the borrowers may have for loan consolidation or other refinancing of the loan.

(ix) The borrower's right to prepay all or part of the loan, at any time, without penalty, and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or canceled including a brief notice of the Department of Defense program for repayment of loans on the basis of specified military service.

(x) A definition of default and the consequences to the borrower including a statement that the default may be reported to a credit bureau or credit reporting agency.

(xi) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.

(xii) The amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of such charges from the proceeds of the loan or paid separately by the borrower.

(xiii) Any cost that may be assessed on the borrower in the collection of the loan including late charges and collection and litigation costs.

(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing—

(i) As part of the written application material;

(ii) As part of the promissory note; or

(iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (f) of this section, an

institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution shall determine the amount advanced each payment period by the following fraction:

$$\frac{\text{Loan amount}}{N}$$

Where Loan Amount = the total loan awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may advance loan funds to the student for those uneven costs.

(d) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid. In either case, the borrower must sign for each advance of funds on the promissory note.

(e)(1) An institution may not advance a loan to a student for a payment period until the student is enrolled for that period.

(2) Subject to the requirements of paragraph (f) of this section—

(i) An institution may advance loan proceeds directly to an enrolled student no more than 10 days before the first day of classes of a payment period; and

(ii) An institution may advance loan proceeds by crediting an enrolled student's account no more than 3 weeks before the first day of classes of a payment period.

(f)(1) The institution shall return to the Fund any amount advanced to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) Only one advance is necessary if the total amount the institution awards a student for an academic year under the Perkins Loan program is less than $501.

(h) An institutional official may not, without prior approval from the Secretary, obtain a student's power of attorney to endorse any check used to disburse loan funds.

(Authority: 20 U.S.C. 1987cc, 1087cc–1, 1087dd, 1091 and 1094)

§ 674.17 Federal interest in allocated funds—transfer of Fund.

(a) Funds received by an institution under the Perkins Loan program, including repayments on loans, are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b)(1) If an institution responsible for a Perkins Loan fund closes or no longer wants to participate in the program, the Secretary directs the institution to take one or more of the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act.

(ii) The transfer of the outstanding loans to another institution.

(iii) The transfer of the outstanding loans to the Department of Education.

(2) An institution that transfers outstanding loans under this paragraph relinquishes its interest in those loans.

(3) If the Secretary directs the transfer of outstanding loans to a second institution, the transferee institution may deposit the collections on those loans in its own Fund. The Secretary considers that portion of the collections on transferred loans corresponding to the transferor institution's ICC to become part of the transferee institution's ICC.

(4) If the Secretary decides to transfer outstanding loans to another institution, and more than one institution offers to collect the outstanding loans, the Secretary directs that the loans be transferred to one or more of the competing institutions on the basis of—

(i) The offering institution's demonstrated loan collection capability; and

(ii) The number of students of the transferor institution expected to enroll in the offering institution.

(5) The Secretary does not take an audit exception against a transferee institution on account of actions or omissions of the transferor institution in the administration of its Fund. The transferee institution shall segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the transferor institution's program.

(Authority: 20 U.S.C. 1087cc, 1087ff), and (1087hh)

§ 674.18 Use of funds.

(a) *General.* An institution shall deposit the funds it receives under the Perkins Loan program into its Fund. It may use these funds only for making loans and the other activities specified in § 674.8(b).

(b) *Administrative cost allowance.* (1) An institution participating in the Perkins Loan program for an award year is entitled to an administrative cost allowance if it advances funds to students in that year under the Perkins Loan program.

(2) For any award year, the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG and Perkins Loan programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(2) of this section, the institution's CWS expenditures under the community service learning program (34 CFR 675.28), and the amount of NDSLs and Perkins loans that it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its cost of administering the CWS, SEOG and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistant General Provisions regulations, 34 CFR Part 668.

(5) An institution shall charge any administrative costs against its Fund during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1087cc, 1087dd, and 1096)

§ 674.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its Perkins Loan program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2)(i) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section.

(ii) An institution shall notify any bank in which it deposits Federal funds

of the accounts into which those funds are deposited by—

(A) Ensuring that the name of the account clearly discloses the fact that Federal funds are deposited in the account; or

(B) Notifying the bank, in writing, of the names of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(3)(i) The institution shall ensure that the cash balances of the accounts into which it deposits Perkins Loan Fund cash assets do not fall below the amount of Fund cash assets deposited in those accounts but not yet expended on authorized purposes in accordance with applicable Title IV HEA program requirements, as determined from the records of the institution.

(ii) If the cash balances of the accounts at any time fall below the amount described in paragraph (a)(3)(i) of this section, the institution is deemed to make any subsequent deposits into the accounts of funds derived from other sources with the intent to restore to that amount those Fund assets previously withdrawn from those accounts. To the extent that these institutional deposits restore the amount previously withdrawn, they are deemed to be Fund assets.

(b) *Account for Perkins Loan Fund.* (1) An institution must maintain all the cash of its Perkins Loan Fund in a separate bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not—

(i) Meet the requirements of paragraph (c) or (d) of this section;

(ii) Identify the cash balance of the Perkins Loan Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) The separate bank account must be identified as the institution's Federal Fund account and must contain all the cash of the institution's Perkins Loan Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, loan cancellation payments, and any earnings of the Fund including interest.

(4) An institution shall ensure that all the cash in its Perkins Loan Fund is—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(5) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(c) *Deposit of ICC into Fund.* An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) *Records and reporting.* (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution shall maintain on file all loan applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS programs (FISAP).

(5) The institution shall maintain all records supporting its application for funds under this part.

(e) *Retention of records*—(1) *Records.* Each institution shall keep intact and accessible records pertaining to the application for and receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

(2) *Loan records.* (i) An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, late charges and collection costs.

(ii) This history must also show the date, nature, and result of each contact with the borrower or endorser in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower and endorser, except bills, routine overdue notices, and routine form letters.

* (3) *Period of retention.* (i) Except for loan records and records of expenditures questioned in audits or Departmental program reviews, an institution shall keep records for an award year for five years after it submits its FISAP.

(ii) An institution shall retain repayment records, including cancellation and deferment requests, for at least five years from the date on which a loan is assigned to the Department of Education, canceled or repaid.

(iii) An institution shall keep records on any claim or expenditure questioned by Federal audit or Department program review until resolution of any audit questions raised with regard to that transaction.

(4) *Manner of retention of records.* (i) An institution shall keep the original promissory notes and repayment schedules in a locked, fireproof container until—

(A) The loans are satisfied; or

(B) The original documents are needed in order to enforce the loan obligation.

(ii) The institution shall retain certified true copies of documents released for enforcement of the loan.

(iii) After the loan obligation is satisfied, the institution shall return the original notes marked "paid in full" to the borrower.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, Direct, and Perkins Loans.

*(v) An institution may keep the records required in this section on microforms or it may keep its records in computer format. If an institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

(vi) Only authorized personnel may have access to the loan documents.

(Authority: 20 U.S.C. 1087cc, 1087hh, 1094, and 1232f)

§ 674.20 Compliance with equal credit opportunity requirements.

(a) In making a loan, an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202).

(b) The Secretary considers the Perkins Loan program to be a credit assistance program authorized by

Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature.

(Authority: 20 U.S.C. 1087aa–1087hh)

Subpart B—Terms of Loans

§ 674.31 Promissory note.

(a) *Promissory note.* (1) An institution may use only a promissory note which the Secretary has approved.

(2) The Secretary has approved the promissory notes set forth in the Appendices to this part. The institution shall not change the substance of the notes set forth in the Appendices without the Secretary's approval.

(3)(i) The institution shall print the note on one page, front and back; or

(ii) The institution may print the note on more than one page if—

(A) The note requires the signature of the borrower and/or any endorser on each page; or

(B) Each page of the note contains both the total number of pages in the complete note as well as the number of each page, e.g., page 1 of 4, page 2 of 4, etc.

(b) *Provisions of the promissory note*—(1) *Interest.* The promissory note must state that—

(i) The rate of interest on the loan is 5 percent per annum on the unpaid balance; and

(ii) No interest shall accrue before the repayment period begins, during certain deferment periods as provided by this subpart, or during the grace period following those deferments.

(2) *Repayment.* (i) Except as otherwise provided in § 674.32, the promissory note must state that the repayment period—

(A) For Direct Loans made on or after October 1, 1980, begins 6 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(B) For Perkins Loans and Direct Loans made before October 1, 1980, begins 9 months after the borrower ceases to be at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(C) May begin earlier at the borrower's request; and

(D) May vary because of minimum monthly repayments (see § 674.33(b)), extensions of repayment (see § 674.33(c)), or deferments (see §§ 674.34, 674.35 and 674.36); and

(ii) The promissory note must state that the borrower shall repay the loan—

(A) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(B) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) *Cancellation.* The promissory note must state that the unpaid principal, interest, late charges and collection costs on the loan are cancelled upon the death or permanent disability of the borrower.

(4) *Prepayment.* The promissory note must state that—

(i) The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to reduce the original loan amount and not consider these amounts to be prepayments;

(iii) If the borrower repays amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be treated as prepayments; and

(iv) If, in an academic year other than that described in paragraph (b)(4)(iii) of this section, a borrower repays more than the amount due for any repayment period, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) *Late charge.* (i) An institution shall state in the promissory note that the institution will assess a late charge if the borrower does not—

(A) Repay all or part of a scheduled repayment when due; or

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(ii)(A) The amount of the late charge on a Perkins Loan or a Direct Loan made to cover the cost of attendance for a period of enrollment that began on or after January 1, 1986 must be determined in accordance with § 674.43(b) (2), (3) and (4).

(B) The amount of the late or penalty charge on a Direct loan made for periods of enrollment that began before January 1, 1986 may be—

(*1*) For each overdue payment on a loan payable in monthly installments, a maximum monthly charge of $1 for the first month and $2 for each additional month.

(*2*) For each overdue payment on a loan payable in bimonthly installments, a maximum bimonthly charge of $3.

(*3*) For each overdue payment on a loan payable in quarterly installments, a maximum charge per quarter of $6. (See Appendix E of this part)

(iii) The institution may—

(A) Add the late charge to the principal the day after the scheduled repayment was due; or

(B) Include it with the next scheduled repayment after the borrower receives notice of the late charge.

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement unless—

(i) The borrower is a minor; and

(ii) Under applicable State law, a note signed by a minor would not create a binding obligation.

(7) *Assignment.* The promissory note must state that a note may only be assigned to—

(i) The United States or an institution approved by the Secretary; or

(ii) An institution to which the borrower has transferred if that institution is participating in the Perkins Loan program.

(8) *Acceleration.* The promissory note must state that an institution may demand immediate repayment of the entire loan, including any late charges, collection costs and accrued interest, if the borrower does not—

(i) Make a scheduled repayment on time; or

(ii) File cancellation or deferment form(s) with the institution on time.

(9) *Cost of collection.* The promissory note must state that the borrower shall pay all attorney's fees and other loan collection costs and charges.

(10) *Disclosure of information.* The promissory note must state that if the borrower defaults on the loan and the loan is referred or assigned to the Secretary, the Secretary may disclose to a credit bureau organization—

(i) That the borrower has defaulted on the loan; and

(ii) Any other relevant information.

(Authority: 20 U.S.C. 1087dd)

§ 674.32 Special terms: loans to less than half-time student borrowers.

(a) The promissory note used with regard to loans to borrowers enrolled on a less than half-time basis must state that the repayment period begins—

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of—

(i) Nine months from the date the loan was made, or

(ii) The end of a none-month period that includes the date the loan was made and began on the date the borrower ceased enrollment as at least a regular half-time student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

(b) The note must otherwise conform to the provisions of § 674.31.

(Authority: U.S.C. 1087dd)

§ 674.33 Repayment

(a) *Repayment Plan.* (1) The institution shall establish a repayment plan before the student ceases to be at least a half-time student.

(2) If the last scheduled payment would be $15 or less the institution may combine it with the next-to-last repayment.

(3) The institution shall apply any payment on a loan in the following order:

(i) Collection costs.

(ii) Late charges.

(iii) Accured interest.

(iv) Principal.

(b) *Minimum repayment rates—(1) Rounding monthly repayment amounts.* If the monthly repayment for all loans made to a borrower by an institution is not a multiple of $5, the institution may round that payment to the next highest dollar amount that is a multiple of $5.

(2) *Minimum monthly repayment of Defense loans from one institution.* An institution may require a borrower of a Defense loan to pay a $15 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $15 a month; and

(ii) The promissory note includes a $15 minimum monthly repayment provision.

(3) *Minimum monthly repayment of Defense loans from more than one institution.* If a borrower has received Defense loans from more than one institution and—

(i) Only one institution exercises $15 option when the monthly repayment would otherwise be less than $15, that institution receives the difference between $15 and the repayment owed to the other institution; or

(ii) Each institution exercises the $15 minimum option the $15 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(4) *Minimum monthly repayment of Direct loans and Perkins loans from one institution.* The institution may require a borrower to pay a $30 monthly repayment on Direct loans or Perkins loans if—

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $30 a month; and

(ii) The promissory note includes a $30 minimum monthly repayment provision.

(5) *Minimum monthly repayment of Direct loans and Perkins loans from more than one institution.* If a borrower has received Direct loans or Perkins loans from more than one institution and—

(i) Only one institution exercises the $30 option when the monthly repayment would otherwise be less than $30 that institution receives the difference between $30 and the repayment owed to the other institution; or

(ii) Each institution exercise's the $30 minimum option, the $30 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(6) *Minimum monthly repayment of both Defense and Direct or Perkins loans from one or more institutions.* If a borrower has received both a Defense loan and a Direct or Perkins loan, the following rules apply:

(i) If the total of the monthly repayments for a Defense, Direct and a Perkins loan is at least $30, no institution may exercise a minimum repayment option, even if the Defense loan repayment is less than $15 or the Direct or Perkins loan repayment is less than $30.

(ii) If the total of the monthly repayments would otherwise be less than $30 for the Defense, Direct, and Perkins loans, an institution may exercise the minimum repayment options applicable to the respective loans. The maximum total monthly repayment, however, may not exceed $30 a month.

(iii) If the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month. However, $15 may be attributed to the Defense loan only if the institution exercises the minimum option on the Defense loan.

(7) *Minimum monthly repayment of loans from one institution with different interest rates.* (i) If a borrower has received loans with different interest rates from the same institution, and the total monthly repayment is at least $30 for the loans, the institution may not exercise the minimum monthly payment on any loan.

(ii) If the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than $30, the institution may exercise the $30 minimum payment option, providing it is in one of the promissory notes, and the institution divides the repayment between the accounts in proportion to the amount of principal advanced under each loan.

(8) *Differing grace periods and deferments.* If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(9) *Hardship.* The institution may reduce the borrower's scheduled repayments for a period of not more than one year if—

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see § 674.33(c)); and

(ii) The borrower's scheduled repayment is the $30 minimum monthly repayment described in paragraph (b) of this section.

(10) The institution shall determine the minimum repayment amount under paragraph (b)(6) of this section for loans with repayment installment intervals greater than one month by multiplying the amounts in paragraph (b)(6) by the number of months in the installment interval.

(c) *Extension of repayment period—*(1) *Hardship.* The institution may extend a borrower's repayment period due to hardship.

(2) *Low-income individual.* (i) For Direct and Perkins loans made on or after October 1, 1980. The institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines that the borrower will be a low-income individual during the course of the repayment period. The term "low-income individual" means an individual whose family's taxable income for the preceding calendar year did not exceed 150 percent of the poverty level established by the Bureau of the Census for that year. The individual's family includes the borrower and any spouse or legal dependents.

(ii) The institution may adjust the repayment schedule to reflect the income of that individual.

(iii) The institution shall review the borrower's status annually. If the borrower is no longer a low-income individual, the institution shall appropriately adjust the repayment period.

(3) Interest continues to accrue during any extension of a repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, sec. 137(d) of Pub. L. 92-318)

§ 674.34 Deferment of repayment—Perkins loans.

(a) The borrower may defer repayment on a Perkins Loan during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see § 674.56);

(2) On full-time active duty as a member of the National Oceanic and Atmospheric Administration Corps;

(3) A Peace Corps volunteer,

(4) A volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs);

(5) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Act of 1973. The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes and allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(6) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a dependent who is so disabled. As used in this paragraph—

(i) "Temporarily totally disabled", with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(ii) "Temporarily totally disabled", with regard to a disabled spouse or other dependent of a borrower, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is one which—

(i) Requires the borrower to hold at least a baccalaureate degree before beginning the internship; and

(ii)(A) A State licensing agency requires an individual to complete as a prerequisite for certification for professional practice or service; or

(B) Is a part of an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(3) To qualify for an internship deferment as provided in paragraph (c)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

(i) A statement from an official of the appropriate State licensing agency that successful completion of the internship program is a prerequisite for its certification of the individual for professional service or practice.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) That a baccalaureate degree must be attained in order to be admitted into the internship program;

(B) That the borrower has been accepted into its internship program; and

(C) The anticipated dates on which the borrower will begin and complete the program.

(4) To qualify for an internship deferment as provided in paragraph (c)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that—

(i) A baccalaureate degree must be attained in order to be admitted into the internship program;

(ii) The borrower has been accepted into its internship program; and

(iii) The internship of residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training.

(e) The borrower need not repay principal, and interest does not accrue, for a period not in excess of six months—

(1) During which the borrower is—

(i) Pregnant, caring for a newborn baby, or caring for a child immediately after placement of the child through adoption; and

(ii) Not attending an eligible institution of higher education or gainfully employed; and

(2) That begins not later than six months after a period in which the borrower was at least a half-time student at an eligible institution.

(f) The borrower need not repay principal, and interest does not accrue, for a period not in excess of one year during which the borrower—

(1) Is a mother of preschool age children;

(2) Has just entered or reentered the work force; and

(3) Is being compensated at a rate which is not more than $1.00 over the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(g) The institution shall not include the deferment periods described in

paragraphs (b), (c), (d), (e), and (f) of this section and the period described in paragraph (h) of this section when determining the 10-year repayment period.

(h) The borrower need not repay principal, and interest does not accrue, until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), and (f) of this section.

(i) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33(c)).

(Authority: 20 U.S.C. 1087dd)

§ 674.35 Deferment of repayment—Direct loans made on or after October 1, 1980.

(a) The borrower may defer repayment on a Direct Loan made on or after October 1, 1980, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need no repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see § 674.56);

(2) A Peace Corps volunteer;

(3) As volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs);

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Act of 1973. The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes an allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5)(i) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a spouse who is so disabled.

(ii) "Temporarily totally disabled" with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(iii) "Temporarily totally disabled" with regard to a disabled spouse, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is an internship—

(i) That requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(ii) That the State licensing agency requires the borrower to complete before certifying the individual for professional practice or service.

(3) To qualify for an internship deferment, the borrower shall provide to the institution the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (d)(2) of this section; and

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(e) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33)(c)).

(f) The institution shall not include the deferment periods described in paragraphs (b), (c), and (d) of this section and the period described in paragraph (g) of this section when determining the 10-year repayment period.

(g) No repayment of principal or interest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (a), (b), and (c) of this section.

(Authority: 20 U.S.C. 1087dd)

§ 674.36 Deferment of repayment—Direct loans made before October 1, 1980 and Defense loans.

(a) A borrower may defer repayment—

(1) On a Direct loan made before October 1, 1980 during the periods described in paragraphs (b) through (e) of this section; and

(2) On a Defense loan, during the periods described in paragraphs (b) through (f) of this section.

(b)(1) A borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the

borrower's deferment ends on the date the institution ceases to qualify.

(c) A borrower need not repay principal, and interest does not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines or Coast Guard (see § 674.56);

(2) A Peace Corps volunteer; or

(3) A volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs).

(d) The institution shall exclude the deferment periods described in paragraphs (b) (1) and (2) of this section when determining the 10-year repayment period.

(e) An institution may permit the borrower to defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33(c)).

(f) The institution may permit the borrower to defer payment of principal and interest, but interest shall continue to accrue, on a Defense loan for a total of 3 years after the commencement or resumption of the repayment period on a loan, during which he or she is attending an institution of higher education as a less-than-half-time regular student.

(Authority: 20 U.S.C. 425, 1087dd)

§ 674.37 Deferment procedures.

(a)(1) To qualify for a deferment on a loan, a borrower shall submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, by the date that the institution establishes.

(2) If the borrower fails to meet the requirements of paragraph (a) (1) of this section, the institution may declare the loan to be in default, and may accelerate the loan.

(b)(1) The institution may grant a deferment to a borrower after it has declared a loan to be a default.

(2) As a condition for a deferment under this paragraph, the institution—

(i) Shall require the borrower to execute a written repayment agreement on the loan; and

(ii) May require the borrower to pay immediately some or all of the amounts previously scheduled to be repaid before the date on which the institution determined that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs.

(c) If the information supplied by the borrower demonstrates that for some or all of the period for which a deferment is requested, the borrower had retained in-school status or was within the initial grace period on the loan, the institution shall—

(1) Redetermine the date on which the borrower was required to commence repayment on the loan;

(2) Deduct from the loan balance any interest accrued and late charges added before the date on which the repayment period commenced, as determined in paragraph (c)(1) of this section; and

(3) Treat in accordance with paragraph (b) of this section, the request for deferment for any remaining portion of the period for which deferment was requested.

(Authority: 20 U.S.C. 425, 1087dd)

§ 674.38 Postponement of loan repayments in anticipation of cancellation.

(a) An institution shall postpone loan repayments for a 12-month period if the borrower—

(1) Notifies the institution in writing that he or she is teaching or engaged in other services that qualify for loan cancellation under § 674.55, 674.56 or 674.57.

(2) Submits a statement signed by a responsible official in the military, agency, or school employing the borrower, specifying that the borrower is so employed. The statement must describe the borrower's job, list the period of employment, and state whether the job is full- or part-time.

(b) If a borrower has received Defense, Direct, and Perkins loans and is eligible for cancellation benefits on only one, the institution may postpone only repayments on the loan for which cancellation is available.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

§ 674.39 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received Defense, Direct, and Perkins loans and only one can be cancelled, the amount due on the uncancelled loan is the amount established in § 674.31(b) (2), loan repayment terms; § 674.33(b), minimum repayment rates; or § 674.33(c), extension of repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

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Subpart D—Loan Cancellation

§ 674.51 Special definitions.

The following definitions apply to this Subpart:

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* (1) One complete school year, or two half years from different school years, excluding summer sessions, that are complete and consecutive and generally fall within a 12-month period.

(2) If such a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Chapter I children:* Children of ages 5 through 17 who are counted under section 111(c) of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Elementary school:* A school that provides elementary education, including education below grade 1, as determined by—

(1) State law; or

(2) The Secretary, if the school is not in a State.

(e) *Handicapped children:* Children of ages 3 through 21 inclusive who require special education and related services because they are—

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech and language impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired;

(8) Specific learning disabled; or

(9) Otherwise health impaired.

(f) *Local educational agency:* (1) A public board of education or other public authority legally constituted within a State to administer, direct, or perform a service function for public elementary or secondary schools in a city, county, township, school district, other political subdivision of a State; or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(g) *Secondary school:* (1) A school that provides secondary education, as determined by—

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(h) *State education agency:* (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(i) *Teacher:* (1) A teacher is a person who provides—

(i) Direct classroom teaching;

(ii) Classroom-type teaching in a non-classroom setting; or

(iii) Educational services to students directly related to classroom teaching such as school librarians or school guidance counselors.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal educational services to students.

(3) An individual who provides one of the following services does not qualify as a teacher unless that individual is licensed, certified, or registered by the appropriate State education agency for that area in which he or she is providing related special educational services, and the services provided by the individual are part of the educational curriculum for handicapped children:

(i) Speech pathology and audiology.

(ii) Psychological and counseling services.

(iii) Physical or occupational therapy.

(iv) Recreational therapy.

Authority: 20 U.S.C. 425, 1087ee, 1141, and 1401(1).

§ 674.52 Cancellation procedures.

(a) *Application for cancellation.* To qualify for cancellation of a loan, a borrower shall submit to the institution to which the loan is owed, by the date that the institution establishes, both a written request for cancellation and any documentation required by the institution to demonstrate that the borrower meets the conditions for the cancellation requested.

(b)(1) An institution may refuse a request for cancellation based on a claim of simultaneously teaching in two or more schools or institutions if it cannot determine easily from the documentation supplied by the borrower that the teaching is full-time. However, it shall grant the cancellation if one school official certifies that a teacher worked full-time for a full academic year.

(2) If the borrower is unable due to illness or pregnancy to complete the academic year, the borrower still qualifies for the cancellation if—

(i) The borrower completes the first half of the academic year, and has begun teaching the second half; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract for the academic year for purposes of salary increment, tenure, and retirement.

(c)(1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation based on teaching, volunteer, or military service by complying with the requirements of paragraph (a) of this section.

(2) A borrower whose defaulted loan has been accelerated—

(i) May qualify for a loan cancellation for services performed before the date of acceleration; and

(ii) Cannot qualify for a cancellation for services performed on or after the date of acceleration.

(3) An institution shall grant a request for cancellation on account of the death or disability of the borrower without regard to the repayment status of the loan.

(d) The Secretary considers a borrower's loan deferment under §§ 674.34, 674.35 and 674.36 to run concurrently with any period for which a cancellation for military or VISTA service is granted.

Authority: 20 U.S.C. 425, 1087ee.

§ 674.53 Teacher cancellation—Direct and Perkins loans.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Direct or Perkins loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds, in that year, under Chapter 1 of the Education Consolidation and Improvement Act of 1981; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of Chapter 1 children.

(2) However, the Secretary does not select more than 50 percent of the schools in a State receiving Chapter 1 assistance.

(3)(i) The Secretary selects schools under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(b) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Direct or Perkins loan, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(c) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a) or (b) (low-income or handicapped) of this section, a borrower shall teach full time for a complete academic year, or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

Authority: 20 U.S.C. 1067ee.

§ 674.54 Teacher cancellation—Defense loans.

(a) *Cancellation for full-time teaching.* (1) An institution shall cancel up to 50 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in—

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year, or its equivalent, of teaching.

(b) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds in that year under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended; and

(ii) Has been selected by the Secretary based on a determination that a high concentration of students enrolled at the school are from low-income families.

(2)(i) The Secretary does not select more than 25 percent of the eligible schools in a State for any year unless at least 50 percent of the enrollment of each school selected is made up of Chapter 1 children.

(ii) In making this calculation, the Secretary uses a low-income factor of $3,000.

(3)(i) The Secretary selects schools under paragraph (b)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(5) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (b) of this section.

(6) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(7) Cancellation for full-time teaching under paragraph (b) of this section is available only for teaching beginning with academic year 1966–67.

(c) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(3) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(4) Cancellation for full-time teaching under paragraph (c) of this section is available only for teaching beginning with the academic year 1967–68.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

Authority: 20 U.S.C. 425(b)(3).

§ 674.55 Cancellation for service in a Head Start program.

(a) An institution shall cancel up to 100 percent of a borrower's Direct or Perkins loan, plus the interest on the unpaid balance, for service as a full-time staff member in a "Head Start" program if—

(1) The program operates for a complete academic year, or its equivalent; and

(2) The borrower's salary does not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching service.

(c)(1) "Head Start" is a preschool program carried out under the Head Start Act (Subchapter B, Chapter 8 of Title VI of Pub. L. 97–35, the Budget Reconciliation Act of 1981, as amended; formerly authorized under section 222(a)(1) of the Economic Opportunity Act of 1964). (42 U.S.C. 2809 (a) (1))

(2) "Full-time staff member" is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start program.

Authority: 20 U.S.C. 425.

§ 674.56 Cancellation for military service.

(a) *Cancellation on a Defense loan.* (1) An institution shall cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for the first complete year of qualifying service, and for each consecutive year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(b) *Cancellation of a Direct or Perkins loan.* (1) An institution shall cancel up to 50 percent of a Direct or Perkins loan for service as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

Authority: 20 U.S.C. 425(b)(3) and 1087ee.

§ 674.57 Cancellation for volunteer service—Perkins loans.

(a) An institution shall cancel up to 70 percent of the outstanding balance on a Perkins loan for service as a volunteer under—

(1) The Peace Corps Act; or

(2) The Domestic Volunteer Service Act of 1973.

(b) Cancellation rates are—

(1) Fifteen percent of the original principal loan amount plus the interest

on the unpaid balance accruing during the year of qualifying service, for each of the first and second twelve-month periods of service;

(2) Twenty percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth twelve-month periods of service.

Authority: 20 U.S.C. 1087ee.

§ 674.58 Cancellation for death or disability.

(a) *Death.* An institution shall cancel the unpaid balance of a borrower's Defense, Direct, or Perkins loan, including interest, if the borrower dies. The lending institution shall cancel the loan on the basis of a death certificate or other evidence of death that is conclusive under State law.

(b) *Permanent and total disability.* (1) An institution shall cancel the unpaid balance of a Defense, Direct, or Perkins loan, including interest, if the borrower becomes permanently and totally disabled after receiving the loan. The lending institution shall decide whether to cancel the loan based on medical evidence, certified by a physician, which the borrower or his or her representative supplies.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(c) *No Federal reimbursement.* No Federal reimbursement is made to an institution for cancellation of loans due to death or disability.

(d) *Retroactive.* Cancellation for death or disability applies retroactively to all Defense, Direct or Perkins loans.

(Authority: 20 U.S.C. 425 and 1087dd and sec. 130(g)(2) of the Education Amendments of 1976, Pub. L. 94-482)

§ 674.59 No cancellation for prior service—no repayment refunded.

(a) No portion of a loan may be cancelled for teaching, Head Start, volunteer or military service if the borrower's service is performed—

(1) During the same period that he or she received the loan; or

(2) Before the date the loan was disbursed to the borrower.

(b) The institution shall not refund a repayment made during a period for which the borrower qualified for a cancellation unless the borrower made the payment due to an institutional error

(Authority: 20 U.S.C. 425 and 1067ee)

§ 674.60 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest cancelled under §§ 674.54 and 674.56(a).

(2) The institution's share of cancelled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) *Reimbursement for Direct and Perkins loan cancellation.* The Secretary pays an institution each award year the principal and interest cancelled from its student loan fund under §§ 674.53, 674.55, 674.56(b) and 674.57. The institution shall deposit this amount in its Fund.

(Authority: 20 U.S.C. 428 and 1087ee)

Appendix A—Promissory Note—Perkins Loan

Perkins Loan Program: PERKINS LOAN

[Any bracketed clause or paragraph may be included at option of institution.]

I, ——— promise to pay to ——— (hereinafter called the Institution) located at ——— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures For Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 9 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is shortened under paragraph III(5), or extended under paragraphs III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

[(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all may outstanding Perkins Loans including those received from other institutions. The amount of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

[(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion,

circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment unless that year is also the year in which I am required to begin repayment on this loan.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Article VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary;

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service;

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled;

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six (6) months—

(i) That follows by six months or less a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of the teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate to 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the

United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the U.S.C.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunter Service Act of 1973.

(2) This loan will be cancelled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

Schedule of Perkins Loans at Other Institutions

	Amount	Date	Institution
1.....			
2.....			
3.....			
4.....			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	signature of borrower
1.....			
2.....			
3.....			
4.....			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature ——— [(seal)].

Date ——— 19—.

Permanent Address (Street or Box Number, City, State, and Zip Code).

Social Security Number (borrower must provide).———

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner ——— [(seal)].

Date ——— 19—.

Permanent Address (Street or Box Number, City, State, Zip Code).

(Authority: 20 U.S.C. 1087dd)

Appendix B—Promissory Note—Direct Loan

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ——— promise to pay to ——— (hereinafter called the Institution) located at ——— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 6 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is shortened under paragraph III(5), or extended under paragraph III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to

me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).]

[(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.]

[(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment, unless that year is also the year in which I am required to begin repayment on this loan.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer, or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service.

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled;

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loan I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL STUDENT LOANS AT OTHER INSTITUTIONS.

	Amount	Date	Institution
1.....			
2.....			
3.....			
4.....			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the date indicated:

	Amount	Date	Signature of borrower
1.....			
2.....			
3.....			
4.....			

NOTICE TO BORROWERS: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature _____ [(seal)]

Date _____ 19—

Permanent Address (Street or Box Number, City, State, and Zip Code) _____

Social Security Number (borrower must provide) _____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner _____ [(seal)]

Date _____ 19—

Permanent Address (Street or Box Number, City, State, and Zip Code) _____

Authority: 20 U.S.C. 1087dd.

Appendix C—Promissory Note—Perkins Loan—Less Than Half-Time Student Borrower

Perkins Loan Program: Perkins Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, _____ promise to pay to _____ (hereinafter called the Institution) located at _____ the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures For Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Lending Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding Perkins loan I have received; or

(ii) If I have no other outstanding Perkins loans, either nine months from the date this loan is made, or, if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraph III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment

period in equal monthly, bimonthly or quarterly installments as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Lending Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles IV, VII, VIII, IX, X, or XI of this agreeemnt.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant informaion, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accure, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary;

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service;

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled;

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother or preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six months—

(i) That follows by six months or less of a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Lending Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or the equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Lending Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented request to the Lending Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973.

(2) This loan will be cancelled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This notice is signed as a sealed instrument.]

Signature ———— [(seal)].

Date ———— 19——.

Permanent Address (Street or Box Number, City, State, and Zip Code)

———————————————

Social Security Number (borrower must provide) ————.————

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner ———— [(seal)].

Date ———— 19——.

Permanent Address (Street or Box Number, City, State, Zip Code)

———————————————

(Authority: 20 U.S.C. 1087dd)

Appendix D—Promissory Note—Direct Loan—Less Than Half-Time Student Borrower

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ———— promise to pay to ———— (hereinafter called the Institution) located at ———— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and

Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to provide that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding loan made under the Perkins Loan Program I have received; or,

(ii) If I have no other outstanding loans made under the Perkins Loan Program, either nine months from the date this loan is made, or, if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraphs III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institaution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this laon at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owned at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayment or extend the repayments period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment, prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charge and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles, VI, VII, VIII, IX, and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant inforrmation, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer, or military service described in Articles VII, VIII and IX, performed after the date of Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service.

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled;

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and

which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have special learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understanding that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance for each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature————————[(seal)].

Date————19——.

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (borrower must provide)————————.

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner————————[(seal)].

Date————19——.

Permanent Address (Street or Box Number, City, State, Zip Code)

(Authority: 20 U.S.C. 1087dd)

Appendix E—Examples for Computing Maximum Penalty Charges (6 Months Unpaid Overdue Payments) on Direct Loans Made for Periods of Enrollment Before January 1, 1986

Monthly repayment schedule	Installment due dates—Missed payments						Separate monthly maximum penalty charges
	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	
1st Past due installment	$1						$1
2nd Past due installment		$1+$2					3
3rd Past due installment			$3+$2				5
4th Past due installment				$5+$2			7
5th Past due installment					$7+$2		9
6th Past due installment						$9+$2	11
Cumulative maximum subtotals.	1	4	9	16	25	36	

Bimonthly repayment schedule	Installment due dates—Missed payments			Separate bimonthly maximum penalty charges
	Jan. 2	Mar. 2	May 2	
1st Past due installment	$3			$3
2nd Past due installment		$3+$3		6
3rd Past due installment			$6+$3	9
Cumulative maximum subtotals	3	9	18	

Quarterly repayment schedule	Installment due dates—Missed payments		Separate quarterly maximum penalty charges
	Jan. 2	Apr. 2	
1st Past due installment	$6		$6
2nd Past due installment		$6+$6	12
Cumulative maximum subtotals	6	18	

Note.—In the above table of examples, the Cumulative Maximum Subtotal line contains the maximum penalty charges that can be assessed on an NDSL borrower for any given installment that was missed on its due date. For example, if three borrowers, all on different repayment schedules, owed and missed their first installment payment on January 2 and all three made their next payment on April 10, the maximum penalty charges that could be assessed each individual borrower would be as follows: $16 to the monthly repayment schedule borrower; $9 to the bimonthly repayment schedule borrower; and $18 to the quarterly repayment schedule borrower.

2. Part 675 of Title 34 of the Code of Federal Regulations is revised to read as follows:

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Subpart A—College Work-Study Program

Sec.

675.1 Purpose and identification of common provisions.
675.2 Definitions.
*675.3 Application.
675.4 Allocation and reallocation.
675.5–675.7 [Reserved]
675.8 Program participation agreement.
675.9 Student eligibility.
675.10 Selection of students for CWS employment.
675.11–675.13 [Reserved]
675.14 Overaward.
*675.15 Coordination with BIA grants.
675.16 Payments to students.
675.17 Federal interest in allocated funds.
675.18 Use of funds.
675.19 Fiscal procedures and records.
675.20 Eligible employers and general conditions and limitation on employment.
675.21 Institutional employment.
675.22 Employment provided by a Federal, State, or local agency, or a private nonprofit organization.
675.23 Employment provided by a private for-profit organization.
675.24 Establishment of wage rate under CWS.
675.25 Earnings applied to cost of attendance.
675.26 CWS Federal share limitations.
675.27 Nature and source of institutional share.
675.28 Community service learning program.

Subpart B—Job Location and Development Programs

675.31 Purpose.
675.32 Program description.
675.33 Allowable costs.
675.34 Multi-institutional job location and development programs, or arrangements with nonprofit organizations.
675.35 Agreement.
675.36 Procedures and records.
675.37 Termination and suspension.
Appendix A [Reserved]
Appendix B—Model Off-campus Agreement

Authority: 42 U.S.C. 2571–2756z, unless otherwise noted.

Subpart A—College Work-Study Program

§ 675.1 Purpose and identification of common provisions.

(a) The College Work-Study (CWS) Program provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 42 U.S.C. 2751–2756b)

§ 675.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
Clock hour
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan Program
Pell Grant Program
Perkins Loan Program
PLUS Program
Secretary
SLS Program
Supplemental Educational Opportunity Grant (SEOG) Program

(b) The Secretary defines other terms used in this part as follows:

*_Expected family contribution_ (EFC): The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

*_Financial need:_ The difference between a student's cost of attendance and his or her EFC.

Full-time student: An enrolled student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarters system.

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

*Financial

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

**Institution of higher education (institution).* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Nonprofit organization: An organization owned and operated by one or more nonprofit corporations or associations where no part of the organization's net earnings benefits, or may lawfully benefit, any private shareholder or entity. An organization may show that it is nonprofit by meeting the provisions of § 75.51 of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.51.

(Authority: 20 U.S.C. 1141(c))

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year. A payment period is not the payroll period discussed in § 675.16.

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(Authority: 20 U.S.C. 1087aa–1087ii)

§ 675.3 Application.

(a) To participate in the CWS program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation or reallocation of the CWS program funds under section 442 of the HEA.

(Authority: 42 U.S.C. 2752)

§ 675.4 Allocation and reallocation.

(a) The Secretary allocates and reallocates funds to institutions participating in the College Work-Study program in accordance with section 442 of the HEA.

(b) As used in section 442 of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.
(2) Business.
(3) Trade/Technical.
(4) Art Schools.
(5) Other Proprietary Institutions.
(6) Non-Proprietary Institutions.

(c) *Payment to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(d) *Authority to expend funds.* Except as specifically provided in § 675.18 (c) and (d), an institution shall not use funds allocated or reallocated for an award year—

(1) To meet CWS wage obligations incurred with regard to an award of CWS employment made in any other award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 42 U.S.C. 2752)

§§ 675.5–675.7 [Reserved]

§ 675.8 Program participation agreement.

To participate in the CWS program, an institution of higher education shall enter into a participation agreement with the Secretary. The agreement provides that, among other things, the institution shall—

(a) Use the funds it receives solely for the purposes specified in this part;

(b) Administer the CWS program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668;

(c) Make employment under the CWS program reasonably available, to the extent of available funds, to all eligible students;

(d) Make equivalent employment offered or arranged by the institution reasonably available, to the extent of available funds, to all students in the institution who want to work; and

(e) Award CWS employment, to the maximum extent practicable, that will complement and reinforce each

recipient's educational program or career goals.

(Authority: 20 U.S.C. 1094, 42 U.S.C. 2753)

§ 675.9 Student eligibility.

A student at an institution of higher education is eligible to receive part-time employment under the CWS program for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1091; 42 U.S.C. 2752–2753)

§ 675.10 Selection of students for CWS employment.

(a) An institution shall make employment under CWS reasonably available, to the extent of available funds, to all eligible students.

(b) An institution shall establish selection procedures and those procedures must be—

(1) Uniformly applied;

(2) In writing; and

(3) Maintained in the institution's files.

(c) If an institution's allocation of CWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall award a reasonable proportion of its allocation of CWS funds to those students.

(Authority: 20 U.S.C. 1091, 42 U.S.C. 2752–2753)

§§ 675.11—675.13 [Reserved]

***§ 675.14 Overaward.**

(a) *Overaward prohibited.* *(1) An institution may award CWS employment to a student if the award, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding CWS employment to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards CWS funds to the student;

(ii) Makes available to its students; or

(iii) Knows about.

(3)(i) If a student receives additional resources before the institution employs the student under the CSW program, and the total resources including the prospective CWS wages exceed the student's need, the overaward is the amount that exceeds need.

*(ii) If a student receives additional resources after the institution disburses the student's CWS wages and the total resources including the CWS wages exceed the student's need by $200 or more and the excess is not from employment, the overaward is the amount that exceeds $199.

*(4) If a student earns more money from employment than the institution anticipated or could have reasonably anticipated when it awarded the CWS employment, the institution shall treat the earnings in accordance with paragraph (c) of this section.

*(b) *Resources.* (1) The Secretary considers that "resources" include but are not limited to any—

(i) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs an ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowship or assistantship;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from employment other than CWS employment for the period of the award except as provided in 34 CFR 675.25; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource any portion of the resources described in paragraph (b)(1) of this section that are included in the student's EFC.

(2) The student may use Supplemental Loans for Students (SLS), State-sponsored or private loans, PLUS loans, or non-need-based ICLs to substitute for his or her expected family contribution. However, if the sum of loan amounts received exceeds the student's expected family contribution, the excess is a resource.

*(c) *Treatment of earnings in excess of need.* An institution shall take the following steps when it learns that a student has earned, or will earn, an amount that when combined with other resouces is $200 or more over his or her financial need:

(1) The institution shall decide whether the student has increased financial need unanticipated when it awarded financial aid to the student. If the student does, and the student's earnings plus other resources do not exceed this increased need by $200 or more, no further action is necessary.

(2) If the student's earnings plus other resources still exceed need by $200 or more after the institution subtracts any additional costs, it shall cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $199.

(3) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (c) (1) and (2) of this section, and the student is enrolled for the next academic year, the institution shall consider the amount that exceeds $199 as a resource to help pay the student's cost of attendance in the following year.

(4) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (c) (1) and (2) of this section, and the student is not enrolled for the next academic year, no further action is necessary.

(d) An institution may continue to employ a student employed in a CWS job, during a payment period, at the time income derived from any employment (CWS or non-CWS employment) is in excess of the student's financial need for that payment period. However, as provided in § 675.26(a)(3), if that excess income equals $200 or more, continued employment under CWS may not be subsidized with CWS funds.

(Authority: 42 U.S.C. 2753(b)(3))

***§ 675.15 Coordination with BIA grants.**

(a) To determine the amount of CWS compensation for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total or the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: Loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 42 U.S.C. 2753)

§ 675.16 Payments to students.

(a)(1)(i) An institution shall pay a student at least once a month. The Federal share of each payment must be paid to the student by check or similar instrument that the student can cash on his or her own endorsement.

(ii) The institution may not directly transfer the Federal share of any payment to the student's account at the institution or elsewhere.

(2) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed.

(3) A student's CWS wages are earned when the student performs the work.

(4) An institution may pay a student after the student's last day of attendance for CWS wages earned while he or she was in attendance at the institution.

(b)(1) If an institution pays a student its share or his or her CWS wages by check, it shall pay the student at the same time it pays the Federal share.

(2) If an institution pays a student its CWS share for an award period in the form of tuition, fees, services, or equipment, it shall pay that share before the student's final payroll period.

(3) If an institution pays its CWS share in the form or prepaid tuition, fees, services, or equipment for a forthcoming academic period, it shall give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(c) A correspondence student shall submit his or her first completed lesson before receiving a payment.

(d) The institution may not obtain a student's power of attorney to authorize any disbursement of funds without prior approval from the Secretary.

(Authority: 20 U.S.C. 1091, 42 U.S.C. 2753)

***§ 675.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see § 675.18(b)) and for certain activities under the Job Location and Development Programs, funds received by an institution under the CWS program are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e. serve as collateral) for any other purpose.

(Authority: 42 U.S.C. 2751–56)

§ 675.18 Use of funds.

(a) *General.* An institution may use its CWS allocation only for—

(1) Paying the Federal share of CWS wages;

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section;

(3) Meeting the cost of a Job Location and Development program under Subpart B; and

(4) Transferring a portion of its CWS allocation to its SEOG allocation as described in paragraph (f) of this section.

(b) *Administrative cost allowance.* (1) An institution participating in the CWS program is entitled to an administrative cost allowance if it provides CWS employment to its students in that award year.

(2) For any award year the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG, and Perkins Loan programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(1) of this section, the institution's CWS expenditures under the community service learning program (§ 675.25), and the amount of loans made under the Perkins Loan program it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR Part 668.

(5)(i) In addition to the amount calculated in paragraph (b)(1) of this section, an institution's administrative cost allowance includes ten (10) percent of its expenditures under the community service learning program set forth in § 675.25.

(ii) This portion of its administrative cost allowance must be taken from the institution's CWS allocation.

(iii) The institution may use this portion of its administrative cost allowance to offset the costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs and to pay the administrative costs of conducting its community service learning program. These latter costs may include the costs of—

(A) Developing mechanisms to assure the academic quality of a student's experience;

(B) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(C) Collaborating with public and private nonprofit agencies in the planning and administering of these programs.

(c) *Carry forward funds.* (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and supplemental CWS allocations for the current award year.

(2) Before an institution may spend its current year CWS allocation, it shall spend any funds carried forward from the previous year.

(d) *Carry back funds.* An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental CWS allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(e) The institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(f) *Transfer funds to SEOG.* (1) An institution may transfer up to 10 percent of the sum of its initial and supplemental

CWS allocations for an award year to its SEOG program.

(2) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under § 675.19(b).

(4) An institution shall transfer back to the SEOG program any funds unexpended at the end of the award year that it transferred to the CWS program from the SEOG program.

(Authority: 20 U.S.C. 1095, 1096; 42 U.S.C. 2753, 2756, 2756b)

§ 675.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its CWS program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) If an institution uses a fiscal agent, that agent may perform only ministerial acts.

(3)(i) Except as provided in paragraph (a)(3)(ii) of this section, a separate bank account for CWS funds is not required. However, an institution shall notify any bank in which it deposits Federal funds of the account in which those funds are deposited by—

(A) Including in the name of the account the fact that Federal funds are deposited; or

(B) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(ii) If the Secretary determines that adequate accounting records are not maintained, the institution shall keep CWS funds in a separate bank account.

(b) *Records and reporting.* (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Include a certification that each student has worked and earned the amount being paid. The student's supervisor, an official of the institution or off-campus agency, shall sign the certification. The certification shall include or be supported by, for students paid on an hourly basis, a time record showing the hours each student worked in clock time sequence;

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see § 675.25(a));

(iv) Are reconciled at least monthly;

(v) Identify each student's account and status;

(vi) Show the eligibility of each student aided under the program; and

(vii) Show how the need was met for each student.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution must maintain on file all CWS employment applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS Programs (FISAP).

(5) The institution shall maintain all records supporting its application for funds under this part.

(c) *Retention of records.*—(1) *Records.* Each institution shall keep intact and accessible records of the application, the receipt, and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for audit questions, an institution shall keep records for an award year for five years after it submits its FISAP for that year.

*(3)(i) An institution may keep the records required in this section on microforms or it may keep its records in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

*(4) *Audit questions.* An institution shall keep records on any claim or expenditure questioned by Federal audit or program review until any audit questions are resolved.

(Authority: 42 U.S.C. 2753 and 20 U.S.C. 1094 and 1232f)

§ 675.20 Eligible employers and general conditions and limitation on employment.

(a) *Eligible CWS employers.* A student may be employed under the CWS program by—

(1) The institution in which the student is enrolled;

(2) A Federal, State, or local public agency;

(3) A private nonprofit organization; or

(4) A private for-profit organization.

(b) *Agreement between institution and organization.*

(1) If an institution wishes to have its students employed under this part by a Federal, State or local agency, or a private nonprofit or for-profit organization, it shall enter into a written agreement with that agency or organization. The agreement must set forth the CWS work conditions (see Appendix B for a sample agreement). The agreement must indicate whether the institution or the agency or organization shall pay the students employed, except that the agreement between an institution and a for-profit organization must require the employer to pay the non-Federal share of the student earnings.

(2) The institution may enter into an agreement with an agency or organization that has professional direction and staff.

(3) The institution is responsible for ensuring that—

(i) Payment for work performed under each agreement is properly documented; and

(ii) Each student's work is properly supervised.

(4) The agreement between the institution and the employing agency or nonprofit organization may require the employer to pay—

(i) The non-Federal share of the student earnings; and

(ii) Required employer costs such as the employer's share of social security or workers' compensation.

(c) *CWS general employment conditions and limitation.* (1) Regardless of the student's employer, the student's work must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of—

(i) Type of work;

(ii) Geographical region;

(iii) Employee proficiency; and

(iv) Any applicable Federal, State, or local law.

(2) CWS employment may not—

(i) Impair existing service contracts;

(ii) Displace employees;

(iii) Fill jobs that are vacant because the employer's regular employees are on strike;

(iv) Involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction; or

(v) Include employment for the U.S. Department of Education.

(Authority: 42 U.S.C. 2753)

§ 675.21 Institutional employment.

(a) An institution, other than a proprietary institution, may employ a student to work for the institution itself, including those operations, such as food service, cleaning, maintenance, or security, for which the institution contracts, if the contract specifies—

(1) The number of students to be employed; and

(2) That the institution selects the students to be employed and determines each student's pay rate.

(b) A proprietary institution may employ a student only in jobs that—

(1) Are on campus;

(2) Furnish student services;

(3) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(4) Do not involve the solicitation of potential students to enroll at the proprietary institution.

(Authority: 42 U.S.C. 2753)

§ 675.22 Employment provided by a Federal, State, or local agency, or a private nonprofit organization.

(a) If a student is employed by a Federal, State, or local public agency, or a private nonprofit organization, the work that the student performs must be in the public interest.

(b) *CWS employment in the public interest.* The Secretary considers work in the public interest to be work performed for the national or community welfare rather than work performed to benefit a particular interest or group. Work is not in the public interest if—

(1) It primarily benefits the members of a limited membership organization such as a credit union, a fraternal or religious order, or a cooperative;

(2) It is for an elected official who is not responsible for the regular administration of Federal, State, or local government;

(3) It is work as a political aide for any elected official;

(4) A student's political support or party affiliation is taken into account in hiring him or her;

(5) It involves any partisan or nonpartisan political activity or is associated with a faction in an election for public or party office; or

(6) It involves dlobbying on the Federal, State, or local level.

(Authority: 42 U.S.C. 2753)

§ 675.23 Employment provided by a private for-profit organization.

(a) An institution may use up to 25 percent of its CWS allocation and reallocation for an award year to pay the compensation of CWS students employed by a private for-profit organization.

(b) If a student is employed by a private, for-profit organization—

(1) The work that the student performs must be academically relevant to the student's educational program; and

(2) The private for-profit organization—

(i) Must provide the non-Federal share of the student's compensation; and

(ii) May not use any CWS funds to pay an employee who would otherwise by employed by that organization.

(Authority: 42 U.S.C. 2753)

§ 675.24 Establishment of wage rate under CWS.

(a) *Wage rates.* (1) Except as provided in paragraph (a)(3) of this section, an institution shall compute CWS compensation on an hourly wage basis for actual time on the job. An institution may not pay a student a salary, commission, or fee.

(2) An institution may not count fringe benefits as part of the wage rate.

(3) An institution may pay a graduate student it employs a salary or an hourly wage, in accordance with its usual practices.

(b) *Minimum wage rate.* The minimum wage rate for a student employee under the CWS program is the minimum wage rate required under section 6(a) of the Fair Labor Standards Act of 1938.

(Authority: 42 U.S.C. 2753)

§ 675.25 Earnings applied to cost of attendance.

(a)(1) The institution shall determine the amount of earnings from a CWS job to be applied to a student's cost of attendance (attributed earnings) by subtracting taxes and job related costs from the student's gross earnings.

(2) Job related costs are costs the student incurs because of his or her job. Examples are uniforms and transportation to and from work. Room and board during a vacation period may also be considered a job related cost if they would not otherwise be incurred except for the CWS employment.

(b) If a student is employed under CWS during a vacation or other period when he or she is not attending classes, the institution shall apply the attributed earnings (earnings minus taxes and job related costs) to the cost of attendance for the next period of enrollment.

(Authority: 42 U.S.C. 2753)

§ 675.26 CWS Federal share limitations.

(a)(1) Unless the Secretary approves a higher share under paragraph (d) of this section, the Federal share of CWS compensation paid to a student employed other than by a for-profit organization may not exceed—

(i) 80 percent for award years 1987–88 and 1988–89, 75 percent for award years 1989–90, and 70 percent for award year 1990–91 and subsequent award years; or

(ii) 90 percent under a community service learning program described in § 675.28 if the amount paid to students under the community service learning program does not exceed 10 percent of the institution's CWS allocation or reallocation for an award year.

(2) The Federal share of the compensation paid to a student employed by a for-profit organization may not exceed 60 percent for award years 1987–88 and 1988–89, 55 percent for award year 1980–90, and 50 percent for award year 1990–91 and subsequent award years.

(3) An institution may not use CWS funds to pay a student after he or she has, in addition to other resources, earned $200 or more over his or her financial need.

(b) The institution may not include the following when determining the Federal share:

(1) Fringe benefits such as paid sick days, paid vacations, or paid holidays.

(2) The employer's share of social security, workers' compensation, retirement, or any other welfare or insurance program that the employer must pay on account of the student employee.

(c) If an institution receives more money under an employment agreement from an off-campus employer than required employer costs, its not-Federal share, and any share of administrative costs that the employer agreed to pay, the excess funds must be—

(1) Used to reduce the Federal share on a dollar-for-dollar basis;

(2) Held in trust for off-campus student employment next year; or

(3) Refunded to the off-campus employer.

(d) For each award year, the Secretary authorizes a Federal share of 100 percent of the compensation earned by a student under this part if—

(1) The work performed by the student is for the institution itself, for a Federal, State or local public agency, or for a private nonprofit organizations; and

(2) The institution at which the student is enrolled—

(i) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR 607), the

Strengthening Historically Black Colleges and Universities program (34 CFR Part 608), or the Strengthening Historically Black Graduate Institutions program (34 CFR Part 609); and

(ii) Requests that increased Federal share as part of its regular CWS funding application for that year.

(Authority: 20 U.S.C. 1069a, 42 U.S.C. 2753)

§ 675.27 Nature and source of institutional share.

(a)(1) An institution may use any resource available to it, except funds allocated under the CWS program, to pay the institutional share of CWS compensation to its students. The institutional share may be paid in the form of services and equipment, e.g., tuition, room, board, and books.

(2) The institution shall document all amounts claimed as non-cash contributions.

(3) Non-cash compensation may not include forgiveness of a charge assessed solely because of a student's employment under the CWS program.

(b) An institution may not solicit or accept fees, commission, contributions, or gifts as a condition for CWS employment, nor permit any organization with which it has an employment agreement to do so.

(Authority: 42 U.S.C. 2753)

§ 675.28 Community service learning program.

(a) From its allocation under the CWS program, an institution may employ its students in a community service learning program designed to develop, improve or expand services for low-income individuals and families, or to solve particular programs related to the needs of low-income individuals.

(b) A community service learning program is a program of student work that—

(1) Provides tangible community services for or on behalf of low-income individuals; and

(2) Provides students with work-learning opportunities related to their educational or vocational programs or goals.

(c) As used in this section—

(1) A low-income individual is an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the proverty level detemined by using criteria of poverty established by the Bureau of the Census; and

(2) Community services—

(i) Are direct services, planning or applied research activities, designed to—

(A) Improve the quality of life for community residents, particularly low-income individuals; or

(B) Solve particular problems relating to the needs of low-income individuals; and

(ii) May include activities related to such fields as health care, education, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development and community improvement.

(Authority: 42 U.S.C. 2756a)

Subpart B—Job Location and Development Programs

§ 675.31 Purpose.

(a) The purpose of the regular job location and development program is to expand off-campus job opportunities for students enrolled in eligible institutions of higher education who want jobs, regardless of their financial need.

(b) The purpose of the community services job location and development program is to locate and develop community services jobs for students qualifying as eligible students under § 675.9.

(Authority: 42 U.S.C. 2756)

§ 675.32 Program description.

(a) *Regular job location and development program.* An institution may expend up to the lesser of $30,000 or 10 percent of its CWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions, locates and develops jobs for currently enrolled students.

(b) *Community services job location and development program.* (1) An institution may expend up to the lesser of $20,000 or 10 percent of its CWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions and through consultation with local nonprofit, governmental, educational, and community-based organizations, locates and develops community services jobs for students qualifying as eligible students under § 675.9.

(2) As used in this subpart, the term "community services" means services that—

(i) Are identified by the institution through formal or informal consultation with local nonprofit, governmental and community-based organizations; and

(ii) Are designed to—

(A) Improve the quality of life for community residents, particularly low-income individuals; or

(B) Solve particular problems related to the needs of the community residents including, but not limited to, such fields as health care, child care, literacy training, education (including tutorial services), housing and neighborhood improvement, rural development, and community improvement.

(Authority: 42 U.S.C. 2756)

§ 675.33 Allowable costs.

(a)(1) *Allowable and unallowable costs.* Except as provided in paragraph (a)(2) of this section, costs reasonably related to carrying out the programs described in § 675.32 are allowable.

(2) Costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs are not allowable.

(b) *Federal share of allowable costs.* An institution may use CWS funds, as provided in § 675.32, to pay up to 80 percent of allowable costs.

(c) *Institutional share of allowable costs.* An institution's share of allowable costs may be in cash or in the form of services. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756)

§ 675.34 Multi-Institutional job location and development programs, or arrangements with nonprofit organizations.

(a) An institution participating in the CWS program may enter into a written agreement to establish and operate job location programs for its students with—

(1) Other participating institutions; or

(2) A nonprofit organization. The nonprofit organization must have professional direction and staff.

(b) The agreement described in paragraph (a) of this section must—

(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions or with a nonprofit organization.

(Authority: 42 U.S.C. 2756)

§ 675.35 Agreement.

(a) A CWS participating institution, to establish or expand these programs, shall enter into an agreement with the Secretary.

(b) The agreement must provide—

(1) That the institution will administer the programs accordance with the HEA and the provisions of this part;

(2) That the institution will submit to the Secretary an annual report on the use of the funds and an evaluation of the effectiveness of the programs in benefiting the institution's students; and

(3) Satisfactory assurances that—

(i) The institution will not use program funds to locate and develop jobs at the institution under the regular job location and development program described in § 675.32(a);

(ii) The institution will use program funds to locate and develop jobs for students during and between periods of attendance at the institution, not upon graduation;

(iii) The program will not displace employees or impair existing service contracts;

(iv) Program funds can realistically be expected to generate total student wages exceeding the total amount of the Federal funds spent under this subpart; and

(v) If the institution uses Federal funds to contract with another organization, suitable performance standards will be part of that contract.

(Authority: 42 U.S.C. 2756)

§ 675.36 Procedures and records.

Procedures and records concerning the administration of a JLD project established and operated under this subpart are governed by applicable provisions of § 675.19.

(Authority: 42 U.S.C. 2756a)

§ 675.37 Termination and suspension.

(a) If the Secretary terminates or suspends an institution's eligibility to participate in the CWS program, the action also applies to the institution's job location and development programs.

(b) The Secretary pays an institution's financial obligations incurred and allowable before the termination but not incurred—

(1) During a suspension; or

(2) In anticipation of a suspension.

(c) However, the institution must cancel as many outstanding obligations as possible.

(Authority: 42 U.S.C. 2756a)

Appendix A—[Reserved]

Appendix B—Model Off-Campus Agreement

(The paragraphs below are suggested as models for the development of a written agreement between an institution of higher education and a Federal, State, or local public agency or private nonprofit organization which employs students participating in the College Work-Study program. Institutions and agencies or organizations may devise additional or substitute paragraphs which are not inconsistent with the statute or regulations.)

This agreement is entered into between ————————, hereinafter known as the "Institution," and ————————, hereinafter known as the "Organization," a (Federal, State, or local public agency), (private nonprofit organization), (strike one), for the purpose of providing work to students eligible for the College Work-Study program (CWS).

Schedules to be attached to this agreement from time to time must be signed by an authorized official of the institution and the organization and must set forth—

(1) brief descriptions of the work to be performed by students under this agreement;

(2) the total number of students to be employed;

(3) the hourly rates of pay, and

(4) the average number of hours per week each student will be used.

These schedules will also state the total length of time the project is expected to run, the total percent, if any, of student compensation that the organization will pay to the institution, and the total percent, if any, of the cost of employers' payroll contribution to be borne by the organization. The institution will inform the organization of the maximum number of hours per week a student may work.

Students will be made available to the organization by the institution to perform specific work assignments. Students may be removed from work on a particular assignment or from the organization by the institution, either on its own initiative or at the request of the organization. The organization agrees that no student will be denied work or subjected to different treatment under this agreement on the grounds of race, color, national origin, or sex. It further agrees that it will comply with the provisions of the Civil Rights Act of 1964 (Pub. L. 88–352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92–318) and the Regulations of the Department of Education which implement those Acts.

(Where appropriate any of the following three paragraphs or other provisions may be included.)

(1) Transportation for students to and from their work assignments will be provided by the organization at its own expense and in a manner acceptable to the institution.

(2) Transportation for students to and from their work assignments will be provided by the institution at its own expense.

(3) Transportation for students to and from their work assignments will not be provided by either the institution or the organization.

(Whether the institution or the organization will be considered the employer of the students covered under the agreement depends upon the specific arrangement as to the type of supervision exercised by the organization. It is advisable to include some provision to indicate the intent of the parties as to who is considered the employer. As appropriate, one of the following two paragraphs may be included.) [1]

(1) The institution is considered the employer for purposes of this agreement. It has the ultimate right to control and direct the services of the students for the organization. It also has the responsibility to determine whether the students meet the eligibility requirements for employment under the College Work-Study program, to assign students to work for the organization, and to determine that the students do perform their work in fact. The organization's right is limited to direction of the details and means by which the result is to be accomplished.

(2) The organization is considered the employer for purposes of this agreement. It has the right to control and direct the services of the students, not only as to the result to be accomplished, but also as to the means by which the result is to be accomplished. The insitution is limited to determining whether the students meet the eligibility requirements for employment under the College Work-Study program, to assigning students to work for the organization, and to determining that the students do perform their work in fact.

(Wording of the following nature may be included, as appropriate, to locate responsibility for payroll disbursements and payment of employers' payroll contributions.)

Compensation of students for work performed on a project under this agreement will be disbursed—and all payments due as an employer's contribution under State or local workers' compensation laws, under Federal or State social security laws, or under other applicable laws, will be made—by the (organization) (institution) (strike one).

(Where appropriate any of the following paragraphs may be included.)

(1) At times agreed upon in writing, the organization will pay to the institution an amount calculated to cover the organization's share of the compensation of students employed under this agreement.

(2) In addition to the payment specified in paragraph (1) above, at times agreed upon in writing, the organization will pay, by way of reimbursement to the institution, or in advance, an amount equal to any and all payments required to be made by the institution under State or local workers' compensation laws, or under Federal or State social security laws, or under any other applicable laws, on account of students participating in projects under this agreement.

(3) At times agreed upon in writing, the institution will pay to the organization an

[1] It should be noted that although the following paragraphs attempt to fix the identity of the employer, they will not necessarily be determinative if the actual facts indicate otherwise. Additional wording which specifies the employer's responsibility in case of injury on the job may also be advisable, since Federal funds are not available to pay for hospital expenses or claims in case of injury on the job. In this connection it may be of interest that one or more insurance firms in at least one State have in the past been willing to write a workers' compensation insurance policy which covers a student's injury on the job regardless of whether it is the institution or the organization which is ultimately determined to have been the student's employer when he or she was injured.

amount calculated to cover the Federal share of the compensation of students employed under this agreement and paid by the organization. Under this arrangement the organization will funish to the institution for each payroll period the following records for review and retention:

(a) Time reports indicating the total hours worked each week in clock time sequence and containing the supervisor's certification as to the accuracy of the hours reported;

(b) A payroll form identifying the period of work, the name of each student, each student's hourly wage rate, the number of hours each student worked, each student's gross pay, all deductions and net earnings, and the total Federal share applicable to each payroll; [2] and

(c) Documentary evidence that students received payment for their work, such as photographic copies of cancelled checks.

3. Part 676 of Title 34 of the Code of Federal Regulations is revised to read as follows:

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Sec.

676.1 Purpose and identification of common provisions.
676.2 Definitions.
*676.3 Application.
676.4 Allocation and reallocation.
676.5—676.7 [Reserved]
676.8 Program participation agreement.
676.9 Student eligibility.
676.10 Selection of students for SEOG awards.
676.11—676.13 [Reserved]
676.14 Overaward.
*676.15 Coordination with BIA grants.
676.16 Payment of an SEOG.
676.17 Federal interest in allocated funds.
676.18 Use of funds.
676.19 Fiscal procedures and records.
676.20 Minimum and maximum SEOG awards.
676.21 SEOG Federal share limitations.

Authority: 20 U.S.C. 1070b—1070b–3, unless otherwise noted.

§ 676.1 Purpose and identification of common provisions.

(a) The Supplemental Educational Opportunity Grant (SEOG) Program awards grants to financially needy students attending institutions of higher education to help them pay their educational costs.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 20 U.S.C. 1070b)

§ 676.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
Clock hour
College Work-Study (CWS) Program
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan Program
Pell Grant Program
Perkins Loan Program
PLUS Program
Secretary
SLS Program

(b) The Secretary defines other terms used in this part as follows:

**Expected family contribution (EFC):* The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

**Financial need:* The difference between a student's cost of attendance and his or her EFC.

**Full-time student:* An enrolled student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements;

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarterly system.

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one.

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

**Institution of higher education (institution):* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(Authority: 20 U.S.C. 1087aa–1087ii)

*§ 676.3 Application.

(a) To participate in the SEOG program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation of reallocation of the SEOG program funds under section 413D of the HEA.

(Authority: 20 U.S.C. 1070b–3)

§ 676.4 Allocation and reallocation.

(a) The Secretary allocates and reallocates funds to institutions participating in the Supplemental Educational Opportunity Grant program in accordance with section 413D of the HEA.

(b) As used in section 413D of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.
(2) Business.
(3) Trade/Technical.
(4) Art Schools.
(5) Other Proprietary Institutions.
(6) Non-Proprietary Institutions.

[2] These forms, when accepted, must be countersigned by the institution as to hours worked as well as to the accuracy of the total Federal share which is to be reimbursed to the organization or agency.

(c) *Payment to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(d) *Authority to expend funds.* An institution shall not use funds allocated or reallocated for an award year—

(1) To make SEOG disbursements to students in any subsequent award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 20 U.S.C. 1070b–3)

§§ 676.5—676.7 [Reserved]

§ 676.8 Program participation agreement.

To participate in the SEOG program, an institution shall enter into a participation agreement with the Secretary. The participation agreement provides, among other things, that the institution shall—

(a) Use the funds it receives solely for the purposes specified in this part; and

(b) Administer the SEOG program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668.

(Authority: 20 U.S.C. 1070b *et seq.*, and 1094)

§ 676.9 Student eligibility.

A student at an institution of higher education is eligible to receive an SEOG for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1070b–1, 1070b–2 and 1091)

§ 676.10 Selection of students for SEOG awards.

(a)(1) In selecting among eligible students for SEOG awards in each award year, an institution shall select those students with the lowest expected family contributions who will also receive Pell Grants in that year.

(2) If the institution has SEOG funds remaining after giving SEOG awards to all the Pell Grant recipients at the institution, the institution shall award the remaining SEOG funds to those eligible students with the lowest expected family contributions who will not receive Pell Grants.

(b) If an institution's allocation of SEOG funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall, consistent with the requirements of paragrah (a) of this section, award a reasonable proportion of its allocation to those students.

(Authority: 20 U.S.C. 1070b–2)

§ 676.11–676.13 [Reserved]

***§ 676.14 Overaward.**

(a) *Overaward prohibited.* *(1) An institution may award or disburse an SEOG to a student if the SEOG, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing an SEOG to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards SEOG funds to the student;

(ii) Makes available to its students; or

(iii) Knows about.

(3)(i) If a student receives additional resources before the institution disburses the SEOG, and the total resources including the SEOG exceed the student's need, and the excess is not from employment, the overaward is the amount that exceeds need.

*(ii) If a student receives additional resources after the institution disburses the SEOG, and the total resources including the SEOG exceed the student's need by $200 or more, and the excess is not from employment, the overaward is the amount that exceeds $199.

*(4) If a student earns more from employment than the institution anticipated or could have reasonably anticipated when it awarded or disbursed the SEOG, the institution shall treat the earnings in accordance with paragraph (d) of this section.

*(b) *Resources.* (1) The Secretary considers that "resources" include but are not limited to any—

(i) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowship or assistantship;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from employment other than CWS employment for the period of the award except as provided in 34 CFR 675.25; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource any portion of the resources described in paragraph (b)(1) of this section that are included in the student's EFC.

(3) The student may use Supplemental Loans for Students (SLS), State-sponsored or private loans, PLUS loans, or non-need-based ICLs to substitute for his or her expected family contribution. However, if the sum of loan amounts received exceeds the student's expected family contribution, the excess is a resource.

(c) *Liability for and recovery of overpayments.* (1) The student is liable for any SEOG overpayment made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because it failed to follow the procedures set forth in this Part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its SEOG account even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by making a reasonable effort to contact the student and recover the overpayment.

The Secretary regards a written demand to the student for repayment of the overawarded funds, with notice that failure to make that repayment will render student ineligible for further Title IV aid, to constitute such a reasonable effort.

*(d) *Treatment of earnings in excess of need.* An institution shall take the following steps when it learns that a student has earned, or will earn, an

amount that when combined with other resources is $200 or more over his or her financial need:

(1) The institution shall decide whether the student has increased financial need unanticipated when it awarded financial aid to the student. If the student does, and the student's earnings plus other resources do not exceed this increased need by $200 or more, no further action is necessary.

(2) If the student's earnings plus other resources still exceed need by $200 or more after the institution subtracts any additional costs, it shall cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $199.

(3) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution shall consider the amount that exceeds $199 as a resource to help pay the student's cost of attendance in the following year.

(4) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes steps required in subparagraphs (1) and (2) of this paragraph, and the student is not enrolled for the next academic year, no further action is necessary.

(Authority: 20 U.S.C. 107b–1)

***§ 676.15 Coordination with BIA grants.**

(a) To determine the amount of an SEOG for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with package prepared for students in similar circumstances who are not eligible for BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1070b–1).

§ 676.16 Payment of an SEOG.

(a)(1) Except as provided in paragraphs (b) and (e) of this section, an institution shall pay in each payment period a portion of an SEOG awarded for a full academic year.

(2) The institution shall determine the amount paid each payment period by the following fraction:

$$\frac{\text{SEOG}}{\text{N}}$$

Where:

SEOG = the total SEOG awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may pay the student, within each payment period, at such times and in such amounts as it determines best meets the student's needs.

(b) If a student incurs uneven cost or resources during an academic year and needs additional funds in a particular payment period, the institution may pay SEOG funds to the student for those uneven costs.

(c) The institution may pay the student directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid.

(d)(1) An institution may not pay an SEOG to student for a payment period until the student registers for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may pay a registered student by crediting the student's account is three weeks before the first day of classes of a payment period.

(e)(1) The institution shall return to the SEOG account any funds paid to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(f) Only one payment is necessary if the total amount the institution awards a student for an academic year under the SEOG and NDSL program is less than $501.

(g) A correspondence student shall submit his or her first completed lesson before receiving an SEOG payment.

(Authority: 20 U.S.C. 1070b. 1091)

***§ 676.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see § 676.18(b)), funds received by an institution under the SEOG program are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(Authority: 20 U.S.C. 1070b–1070b–3)

§ 676.18 Use of funds.

(a) *General.* An institution may use its SEOG allocation and reallocation only for—

(1) Making grants to eligible students;

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section; and

(3) Transferring a portion of its SEOG allocation to its CWS allocation as described in paragraph (c) of this section.

(b) *Administrative cost allowance.* (1) An institution participating in the SEOG program is entitled to an administrative cost allowance for an award year if it awards grants to students in that year.

(2) For any award year, the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG, and Perkins Loan programs; plus

(ii) four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution may not include, in calculating this allowance in paragraph (b)(1) of this section, the institution's CWS expenditures under the community service learning program (34 CFR 675.25) and the amount of loans made under the Perkins Loan Program that it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its costs of administering the Pell Grant,

CWS, SEOG, and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR 668.

(c) *Transfer of funds to CWS.* (1) An institution may transfer up to 10 percent of the sum of its SEOG allocation for an award year to its CWS program.

(2) An institution shall use transferred funds according to the requirements of the program to which they were transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under § 676.19.

(4) An institution shall transfer back to the CWS program any funds unexpended at the end of the award year that it transferred to the SEOG program from the CWS program.

(Authority: 20 U.S.C. 1070b *et seq.*, 1095 and 1096)

§ 676.19 Fiscal procedures and records.

(a) *Fiscal Procedures.* (1) In administering its SEOG program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section, a separate bank account for SEOG funds is not required. However, an institution shall notify any bank in which it deposits Federal funds of the accounts in which those funds are deposited by—

(A) Including in the name of the account the fact that Federal funds are desposited; or

(B) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(ii) If the Secretary determines that adequate accounting records are not maintained, the institution shall keep SEOG funds in a separate bank account.

(b) *Record and reporting.* (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) The institution shall maintain on file all SEOG applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS Programs (FISAP).

(4) The institution shall maintain all records supporting its application for funds under this part.

(5) Each year an institution shall submit a Fiscal Operation Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(c) *Retention of records.*—(1) *Records.* Each institution shall keep intact and accessible records of the application, the receipt, and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

* (2) *Period of retention.* Except for audit questions, an institution shall keep records for an award year for five years after it submits its FISAP for that year.

* (3)(i) An institution may keep the records required in this section on microforms or it may keep its records in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

(4) *Audit questions.* An institution shall keep records on any claim or expenditure questioned by Federal audit or program review until any audit questions are resolved.

(Authority: 20 U.S.C. 1070b, 1094, and 1232f)

§ 676.20 Minimum and maximum SEOG awards.

(a) An institution may award an SEOG for an academic year in an amount it determines a student needs to

continue his or her studies. However, an SEOG may not be awarded for a full academic year that is—

(1) Less than $100; or

(2) More than $4,000.

(b) For a student enrolled for less than a full academic year, the minimum allowable SEOG may be proportionately reduced.

(Authority: 20 U.S.C. 1070, 1070b–1)

§ 676.21 SEOG Federal share limitations.

(a) Except as provided in paragraph (b) of this section—

(1) For award years 1987–88 and 1988–89, the Federal share of SEOGs awarded to students by an institution equals 100 percent of the amount of the SEOG awards made by that institution;

(2) For award year 1989–90, the Federal share of SEOG awards made by an institution may not exceed 95 percent of the amount of those awards;

(3) For award year 1990–91, the Federal share of SEOG awards made by an institution may not exceed 90 percent of the amount of those awards; and

(4) For award year 1991–1992 and subsequent award years, the Federal share of SEOG awards made by an institution may not exceed 85 percent of the amount of those awards.

(b) Beginning with the 1989–90 award year, the Secretary authorizes, for each award year, a Federal share of 100 percent of the SEOGs awarded to students by an institution that—

(1) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR Part 607) or the Strengthening Historically Black Colleges and Universities program (34 CFR Part 608); and

(2) Requests that increased Federal share as part of its regular SEOG funding application for that year.

(c) The non-Federal share of SEOG awards must be made from the institution's own resources, which include for this purpose—

(1) Institutional grants and scholarships;

(2) Tuition or fee waivers;

(3) State scholarships; and

(4) Foundation or other charitable organization funds.

(Authority: 20 U.S.C. 1070b–2 and 1069a)

[FR Doc. 27422 Filed 11–30–87; 8:45 am]

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federal register

Tuesday
December 1, 1987

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

Postsecondary Education Program for Handicapped Persons; Final Annual Funding Priority; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Postsecondary Education Program for Handicapped Persons

AGENCY: Department of Education.

ACTION: Notice of final annual funding priority.

SUMMARY: The Secretary announces an annual funding priority for the Postsecondary Education Program for Handicapped Persons-Demonstration Projects component. This priority will support projects that provide development or refinement of employment-related skills to youths with mild and moderate handicaps in community colleges, vocational-technical institutions, and other postsecondary educational settings.

EFFECTIVE DATE: This final annual funding priority takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this annual funding priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Rosenstein, Postsecondary Education Program for Handicapped Persons, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3096—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1176.

SUPPLEMENTARY INFORMATION: The Postsecondary Education Program for Handicapped Persons is authorized by section 625 of Part C of the Education of the Handicapped Act (20 U.S.C. 1424a) to develop, operate, and disseminate specially designed or adapted model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities. Consideration is given, under a separate competition, to four regional centers serving individuals who are deaf. This notice concerns support for model projects for individuals with handicapping conditions other than deafness, for the purpose of developing and adapting educational programs that meet the special needs of these individuals. These projects are to coordinate, facilitate, and encourage education of persons with handicaps with their nonhandicapped peers. Under this program, The Secretary makes awards to State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies.

Summary of Comment and Response

A notice of proposed annual funding priority was published in the **Federal Register** on September 9, 1987 (52 FR 34104). The public was given thirty days in which to comment. One comment was received from a professional organization in response to the notice of proposed annual funding priority. The comment and the Department's response are summarized below:

Comment: The comment expresses concern that the priority may be too limiting in that it focuses solely "on short-term educational interventions".

Response: No change has been made. Longer-term educational interventions have been targeted in past years under this program, and models have been generated for two- and four-year programs. The focus suggested under the current priority encourages the field to propose specially-modified interventions that may better fit the needs of the targeted population.

Priority

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference to applications submitted under this priority for model projects of supportive services to individuals with mild or moderate handicapping conditions other than deafness that (1) focus on specially adapted or designed educational programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers, and (2) are targeted to vocational outcomes for youth who have recently completed or left secondary educational programs. Applicants must develop strategies for locating and serving young adults with handicaps who are in need of continued educational services to secure and maintain competitive employment. Applicants must establish or make use of existing formal cooperative relationships between secondary schools and potential employers, and must assure that these young adults will have individualized educational plans that detail the goals and objectives for obtaining the skills requisite for employment. Job placements and follow-along activities are expected as basic components of proposed activities. This priority is focused on short-term educational interventions necessary to assist youth to secure competitive employment. In addition to entry-level employment, interventions may include training in aspects of adjustment to the community as well as to the workplace. Applications for multi-year awards will have graduates entering the work force; these applications may reflect follow-up and follow-along data from worker-graduates in their evaluation plans.

Program Authority: 20 U.S. 1424a.

Dated: November 16, 1987.

(Catalog of Federal Domestic Assistance No. 84.078: Postsecondary Educational Programs for Handicapped Persons)

William J. Bennett,

Secretary of Education.

[FR Doc. 87–27500 Filed 11–30–87; 8:45 am]

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federal register

Tuesday
December 1, 1987

Part V

Environmental Protection Agency

**40 CFR Parts 144, 264, 265, 270, and 271
Hazardous Waste; Codification Rule for 1984 RCRA Amendments; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144, 264, 265, 270, and 271

[SWH; FRL 3211-6]

Hazardous Waste; Codification Rule for the 1984 RCRA Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule..

SUMMARY: This rule is a companion to EPA's final rule of July 15, 1985, which codified requirements specified by the Hazardous and Solid Waste Amendments of 1984 (HSWA) that took effect immediately or shortly after enactment (see 50 FR 28702). The July 15 final rule amended EPA's hazardous waste regulations to incorporate the statutory language of HSWA into EPA's existing regulatory framework. This rule codifies further changes to the existing regulations which implement the HSWA provisions relating to corrective action and permitting for RCRA facilities. Today's rule also includes provisions to implement the statutory requirements pertaining to corrective action for releases beyond the facility boundary, and to corrective action for hazardous waste injection wells.

DATES: The following regulatory amendments to Title 40 of the Code of Federal Regulations become effective December 31, 1987—§§ 144.1(h), 144.31(g), 265.1(c)(2), 270.1(c) introductory text, (5) and (6), 270.4(a), 270.10(k), 270.14 (c) introductory text and (d), 270.41(a)(3), 270.60(b)(3) and the addition to Table 1 in 271.1(j).

The following regulatory amendments become effective immediately December 1, 1987—§§ 264.100(e) introductory text, (1) and (2), and 264.101(c).

ADDRESS: The docket for this rulemaking is available for public inspection in the sub-basement, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. The docket number is F–87–CODF–FFFFF.

FOR FURTHER INFORMATION CONTACT: Sharon Frey, Closure/Financial Responsibility Section (WH–563), Office of Solid Waste, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; (202) 475–6725.

SUPPLEMENTARY INFORMATION:

Preamble Outline

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I. Authority

These regulations are issued under authority of sections 2002, 3004, 3005, 3006, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912, 6924, 6925, 6926, and 6935.

II. Background

The preamble to the final codification rule promulgated on July 15, 1985 (50 FR 28702) provides substantial detail on the background and purpose of today's rule, which incorporates into the existing Subtitle C regulations an additional set of requirements from the 1984 Hazardous and Solid Waste Amendments (HSWA). The preamble to the July 15, 1985 final rule should be read first to understand the context of this rule. Briefly, the July 15 rule codified, with very few changes, the statutory language of many of the new provisions of the HSWA to the existing Subtitle C regulations, with a preamble that provided EPA's legal interpretations of that language. Today's rule, by contrast, codifies changes to the Subtitle C regulations that are more than mere transpositions of those statutory provisions which took effect immediately or shortly after enactment. This rule and accompanying preamble deal with issues relating to corrective action and permit information requirements that are generally logical outgrowths of the 1984 amendments rather than requirements imposed directly by the statute.

The proposal for today's rule was published for comment on March 28, 1986 (51 FR 10706). In addition to corrective action and permit requirements, the proposed rule also contained provisions addressing land disposal restrictions and minimum technology requirements under section 3004 of RCRA. Those latter provisions will be addressed in a separate final rule.

III. Section-by-Section Analysis

The following sections of this preamble include discussions of the major issues and explanations of EPA's rationale for promulgating the final rules.

A. Corrective Action Requirements

1. Permit Application Requirements

In the March 28, 1986 proposed rule, EPA proposed to amend § 270.14 by adding a new provision (paragraph d) requiring the provision of additional information in Part B applications pertaining to solid waste management units (SWMUs) at facilities seeking a RCRA permit. The proposed provision, as part of the codification of corrective action requirements under section 3004(u) of RCRA, would require owners and operators of facilities seeking permits to provide descriptive information on the SWMUs themselves and all available information pertaining to any release from the units. The proposal also gives EPA or an authorized state the authority to require the permit applicant to conduct sampling and analysis at the SWMUs to determine if more detailed analysis is necessary.

The Agency received many comments on the proposed requirement. Several commenters objected to the provision, arguing that it sets no real limitations on the amount of information which may be demanded by the permitted authority. In particular, these commenters contended that the proposed rule may compel permit applicants to conduct extensive sampling and analysis simply to determine whether a release has occurred.

The Agency, while sensitive to these concerns, is today promulgating the requirement as proposed. The Agency does not intend this rule to require extensive sampling and monitoring at every solid waste management unit at a RCRA facility seeking a permit. However, EPA believes that sampling and analytical data are often necessary as part of its preliminary assessment of releases from SWMUs (the RCRA Facility Assessment or RFA) before a permit is issued, and that it should have a mechanism to require the owner/operator to provide those data. As described in the proposed rule, EPA will conduct an RFA [1] on each facility during

[1] The RFA was previously known as the Preliminary Assessment/Site Investigation (PA/SI), but has been changed to distinguish it from the analogous CERCLA process. Similiarly, the RFI (RCRA Facility Investigation) is analogous to a RI (Remedial Investigation under CERCLA. These

Continued

the permitting process to determine whether a release from a SWMU has or is likely to have occurred, as well as to determine what subsequent investigations may be necessary to identify and characterize the release further. When EPA conducts an RFA, it will rely first on existing information about the facility and a site visit to make this determination. Sampling is generally required only in situations where there is insufficient evidence on which to make an initial release determination. This requirement is not anticipated to place an unreasonable new resource burden on owners/operators. The actual extent of sampling will vary, however, depending on the amount and quality of existing information available.

The Agency also received a number of comments concerning certain descriptive information on SWMUs that the proposal required. One commenter objected that the proposed rule did not require a structural description of the solid waste management unit, arguing that this information is needed to determine the potential for releases of hazardous waste from the unit. Another suggested that EPA should require a hydrological study for solid waste management units as part of the permit application. A third commenter was concerned that the provision required information that may not be available for certain types of solid waste management units such as long-inoperative wood pallet or scrap metal storage areas.

As noted in the preamble to the proposed rule, the new requirements in § 270.14(d) are intended to assist the Agency in determining the existence or likelihood that there is or has been a release at a facility. Complete information on solid waste management units will enhance the Agency's ability to make these determinations; however, the Agency recognizes that for many solid waste management units, detailed information on waste characteristics and design of the units may not be available. Accordingly, the final rule states that while general information on solid waste management units (e.g., location, unit type, dimensions) is required for each unit, specification of all wastes that have been managed at the unit and information pertaining to releases from such units is required only to the extent that this information is available (with the exception of any additional data that may be required under § 270.14(d)(3)).

The Agency is generally retaining its proposed approach for the reasons stated above. EPA agrees, however, that structural descriptions of solid waste management units should be required to assist the Agency in determining the potential or likelihood that a release has occurred. The Agency recognizes that some SWMUs do not have defined engineered structures; in such cases this requirement would be satisfied by a general description. The final rule includes this requirement.

Another commenter expressed the concern that a conclusion from an RFA that no further investigation is necessary could be construed to shield owner/operators from any future responsibilities for responding to releases and implementing corrective action as necessary. The commenter further suggested that EPA should routinely require ground-water monitoring at certain types of solid waste management units, such as land treatment or disposal units, unless the facility could make a specific showing that no release has occurred or is likely to occur in the future.

The legislative history of section 3004(u) demonstrates that Congress intended to extend the requirements of section 3004(u) to releases that occur after permit issuance (see S. Rep. 98–284, 98th Cong. 1st Sess. 32 (1983)). Although the emphasis of the corrective action program is on addressing releases that are identified at the time of permit issuance, the Agency recognizes the need to detect and correct future releases from SWMU's. EPA has authority under section 3004(u) to require ground-water monitoring to detect future releases. However, the Agency currently believes it is not necessary to require routine ground-water monitoring at all SWMU's located on Subtitle C facilities. EPA is considering the need to monitor solid waste management facilities more broadly in the context of its review of the Subtitle D program for the regulation of solid waste. In the interim, the Agency intends to exercise its monitoring authority under section 3004(u) on a case-by-case basis, writing permit conditions to require monitoring (or modeling) for any media where it finds that a SWMU is likely to release hazardous constituents that pose a threat to human health and the environment. The Agency may consider factors such as the volume and concentration of the constituents, site characteristics, unit design or other factors in making this determination.

In cases where releases from a SWMU are not identified at the time of permit issuance, the owner/operator has a continuing responsibility to report and address such releases (ref. § 270.30(1)). In addition, permits for land disposal facilities will be reviewed five years after issuance, to determine whether modifications to the permit, including any new or additional corrective action requirements should be added to the permit. At the time of permit reissuance, the Agency has the opportunity to reevaluate the potential for releases at the facility, and to address them in the context of the reissued permit.

Finally, the Agency received two comments requesting clarification of specific language in this provision. One commenter noted that paragraph (d)(3) should specify that sampling and analysis information be "supplied" to the permitting agency. Another commenter requested that the phrase "hazardous waste or constituents" in paragraph (d)(2) be clarified to read "hazardous waste or hazardous constituents." The final rule adopts these clarifications.

One commenter expressed the opinion that the permit application information requirements of § 270.14(d) should not apply to units in which certain wastes identified under RCRA section 3001(b)(3)(A)(i), including fossil fuel combustion wastes, are managed. The commenter argued that such wastes are exempt from coverage under § 3004(u), and therefore should not be required to comply with information requirements promulgated pursuant to section 3004(u). To support his contention, the commenter pointed out that section 3001(b)(3)(A) provides that these specified wastes shall be "subject only to regulation under other applicable provisions of Federal or state law in lieu of Subtitle C of RCRA until at least six months after the date of the submission of the applicable study required to be conducted under subsection * * * (n) * * * of section 8002" of RCRA. The commenter thus argued that since section 3004(u) is located in Subtitle C of RCRA, its requirements do not apply to fuel combustion wastes.

This comment raises a significant issue of statutory interpretation that applies not only to wastes from fossil fuel combustion, but also to three other categories of wastes excluded under section 3001. Section 3001(b)(3), the provision quoted above, also addresses wastes from the extraction, beneficiation and processing of ores and minerals ("mining wastes"), and cement kiln dust wastes. This provision is commonly called the "Bevill amendment." In addition, section 3001(b)(2) subjects drilling fluids,

procedures are described more fully in EPA's National Corrective Action Strategy, announced in the Federal Register of October 23, 1986 (51 FR 205).

produced waters, and other wastes associated with the production of crude oil or natural gas or geothermal energy ("oil and gas wastes") to a similar limitation.

EPA does not agree that these exclusions extend to corrective action for releases from solid waste management units under section 3004(u). EPA believes that Congress enacted these provisions in 1980 to prohibit EPA from regulating these wastes as "hazardous" while it studied the impacts of such regulation. When Congress enacted these exemptions in 1980, Subtitle C provided only for the regulation of hazardous waste. Hence, the reference to "this subtitle" indicated only an intent to exclude these special wastes from EPA's hazardous waste regulations.

Section 3004(u), however, does not fit in the 1980 statutory scheme. Although it is located in Subtitle C, it provides for clean-up of releases of "hazardous constituents" (not just hazardous wastes) from both hazardous waste and solid waste management units. Indeed, section 3004(u) is the only provision in Subtitle C that reaches beyond the universe of hazardous waste. Thus, the question of statutory interpretation for the Agency is whether the exemption, which extends to regulation "under Subtitle C", should be read as covering the authorities granted to EPA to correct releases of hazardous constituents at solid waste management units.

EPA does not believe that Congress intended the exemptions in section 3001, which were clearly aimed at hazardous waste, to extend to corrective action for solid wastes under section 3004(u). Certainly nothing in the plain language of the legislative history of section 3004(u) suggests that Congress intended to create any exemptions for any category of solid waste. Furthermore, the commenter conceded that fossil fuel combustion wastes are "solid wastes" subject to corrective action regulation under Subtitle D and emergency clean-up orders under Section 7003. (See the brief of petitioner Edison Electric Institute in *United Technologies Corporation* v. *EPA*, D.C. Cir. No. 85-1654 consolidated cases.) It is more logical and consistent with Congressional goals to conclude that these solid wastes are similarly subject to clean-up requirements under section 3004(u).

An exemption from corrective action under section 3004(u) is also not necessary to achieve the goals of the original exemption in section 3001. The sponsors of the 1980 amendments were chiefly concerned with the lack of specific data showing that these solid wastes endangered human health and the environment, and the potential for disruptive economic impacts if these wastes were subject to regulation as hazardous wastes under Subtitle C. *See, e.g.*, 126 Cong. Rec. H1101-1102 (daily ed. Feb. 19, 1980) (remarks of Representative Bevill); 125 Cong. Rec. S6821 (daily ed. June 4, 1979) (remarks of Senator Huddleston). Section 3004(u), however, will not require any corrective action unless EPA obtains data showing that specific solid waste management units are releasing hazardous constituents in the manner that threatens human health and the environment. Furthermore, a decision to require clean-up under section 3004(u) will not require compliance with the full range of Subtitle C regulations. For example, the double liner retrofitting requirements in section 3005(j) would not apply to a solid waste management unit containing a Bevill waste or an oil and gas waste. Corrective action will not have the same economic impact as full Subtitle C regulation. As indicated, Congress provided for corrective action for solid wastes under Subtitle D and/or section 7003; coverage under section 3004(u) simply provides a linkage between corrective action and the hazardous waste permitting process.

In summary, EPA has concluded that "Bevill wastes" and oil and gas wastes are subject to the corrective action requirements of section 3004(u) when they are found in solid waste management units at facilities that need permits to manage hazardous wastes.

2. Corrective Action Beyond the Facility Boundary

In the March 28, 1986 proposed rule, the Agency proposed to codify section 3004(v) of HSWA by adding §§ 264.100(e) and 264.101(c) to the current regulations. This proposal required owners/operators of hazardous waste treatment, storage, and disposal facilities to institute corrective action beyond the facility boundary where necessary to protect human health and the environment, unless the owner/operator is denied access to adjacent lands despite the owner/operator's best efforts. This requirement also applies to permit-by-rule facilities required to compy with § 264.101.

In the preamble to the proposed rule, the Agency solicited comment on how "best efforts" should be defined, and what kind of documentation should be required. Several commenters questioned the need for rigid or defined rules as to what constitutes "best efforts," arguing that the circumstances surrounding individual sites vary extensively, and therefore can not be adequately addressed in a generic rulemaking. Other commenters suggested that a certified letter sent by the owner or operator requesting access to conduct corrective action should suffice to demonstrate best efforts to obtain permission from the adjacent landowner. EPA agrees with those commenters who argued the need for a flexible, case-by-case approach. In determining what constitutes "best efforts," the Agency will consider a number of factors, including the necessity of the off-site investigation, the extent and significance of the release, the contacts made between property owners, and the reasonableness of the efforts. In any case, the Agency believes that efforts to seek permission should, at a minimum, be demonstrated through a certified letter (or equivalent demonstration) from the owner/operator.

In the proposed rule, the Agency also requested comments on what kinds of corrective measures should be required on-site if permission to extend corrective action measures beyond the facility boundary is denied. Specifically, the Agency asked for comments on whether hydraulic gradient modifications or purchase of water rights should be required in these cases.

Several commenters cautioned that these alternatives may not be physically possible, legal, or effective in many cases. For example, gradient modifications may dewater neighbors' wells and streams, and water rights are not transferable in some states. In light of these considerations, the Agency agrees with those commenters who suggested that while these options may be appropriate at a particular site, they should not be an automatic requirement. Therefore, the agency will examine the feasibility and appropriateness of on-site measures on a case-by-case basis, considering site-specific hydrogeologic conditions and other relevant factors, in situations where off-site access is denied. Today's final rule has added to §§ 264.100(e)(2) and 264.101(c) to clarify that owner/operators are not relieved of responsibilities to perform on-site corrective actions if off-site access is denied.

EPA disagrees with those commenters who argued that if permission from the adjacent landowner is denied—despite the owner/operator's best efforts—the owner/operator should be relieved of all responsibility to clean up a release that has migrated beyond the facility boundary. The Agency believes that even if permission is denied, owners/operators may still not be relieved of their responsibility to undertake

corrective measures to address releases that have migrated beyond the facility boundary. In such cases, owner/operators may be required, on a case-by-case basis, to implement certain corrective measures on-site to clean up releases beyond the facility boundary if such measures are necessary to protect human health and the environment, and if they are possible, legal, and effective.

The proposed rule also clarified that assurances of financial responsibility must be provided for corrective action beyond the facility boundary. This requirement has been promulgated as proposed. One commenter objected to this provision, arguing that there is no specific requirement under section 3004(v) of HSWA that owner/operators must provide such assurances. EPA disagrees with this commenter's interpretation of sections 3004(u) and 3004(v) of HSWA. The Agency believes that Congress intended the financial assurance requirements of sections 3004(a)(6) and 3004(u) to apply to all corrective actions that are necessary to address releases from solid waste management units at a facility, regardless of whether those releases have migrated beyond the facility boundary and thus require off-site actions. Rules proposed on October 24, 1986 (51 FR 37854) address in detail requirements for financial assurance for corrective action.

3. Corrective Action for Injection Wells

The March 28, 1986 rule proposed amendments to three sections of existing regulations for underground injection wells which inject hazardous waste: 40 CFR 144.1(h), 144.31(g), and 144.56. These proposed amendments were intended to define the requirements for such wells as related to the corrective action provisions of RCRA section 3004(u). Today's final rule makes final two of the three proposed amendments: §§ 144.1(h) and 144.31(g). The following discussion provides a general outline of the Agency's overall approach to permitting of hazardous waste injection wells as related to corrective action requirements under RCRA and the Safe Drinking Water Act (SDWA). It also explains today's new regulatory amendment (§ 270.60(b)(3)(ii)), and how and why this final rulemaking differs from the proposal.

i. *SDWA and RCRA Permitting Scheme.* A hazardous waste injection well must have authorization to operate under both SDWA and RCRA. Authorization is obtained under SDWA through an Underground Injection Control (UIC) permit or an authorization by rule (see 40 CFR 144.21). RCRA authorization is obtained through interim status (40 CFR Part 265 Subpart R) or a permit-by-rule (40 CFR 270.60(b)). RCRA interim status facilities are considered to have a pending permit application, and must submit required information when it is called in by the regulatory authority. Neither RCRA nor SDWA authorization alone is sufficient to inject hazardous waste.

RCRA permits-by-rule issued after November 8, 1984 must address the corrective action requirements of RCRA section 3004(u), as codified in § 264.101 (see § 270.60(b)(3)). (The term "corrective action", in this context, is not the same as the term corrective action as used in the UIC program under 40 CFR 144.55 for plugging man-made conduits). Sections 264.101 and 270.60(b) require that a RCRA permit-by-rule issued after November 8, 1984, address corrective action for releases of hazardous waste or constituents from any solid waste management unit (SWMU) at the facility. Therefore, a RCRA permit-by-rule issued after this date must address any necessary corrective action not only for the well, but for all SWMUs at the facility.

The timing of implementation of section 3004(u) corrective action requirements at facilities with injection wells will vary, depending on the nature of the facility and its permitting status. The major categories of facilities, and the corresponding timing of implementation of section 3004(u) requirements, are discussed briefly below.

First, many injection wells with RCRA interim status are located at interim status facilities which have another unit or units that are subject to RCRA permitting (e.g., hazardous waste storage tanks). For these facilities, as for all facilities which inject hazardous waste, EPA intends to review potential releases from the injection well as part of the UIC permitting process (under SDWA authorities, and, if necessary, RCRA section 3008(h)). However, implementation of substantive requirements of section 3004(u) for the well and all SWMUs at the facility will be addressed through the first RCRA permit issued to the other hazardous waste unit(s) at the facility. Once the RCRA permit for the other unit(s) has been issued, the injection well would automatically obtain its permit-by-rule by fulfilling the corrective action requirements of § 270.60(b), provided that the other requirements of § 270.60(b) have been met.

Second, some hazardous waste injection wells are located at facilities with no other units subject to RCRA permitting. In this case, EPA will implement corrective action requirements of section 3004(u) as they apply to SWMUs on the surface concurrently with the UIC permit process. These requirements will be imposed in a RCRA "rider permit" to the UIC permit which would be issued according to RCRA permitting procedures in conjunction with issuance of the UIC permit. When the UIC and the RCRA "rider" permit have been issued, the well will have a RCRA permit-by-rule.

Third, some hazardous waste injection wells were issued UIC permits before November 8, 1984, and, therefore, are operating under a RCRA permit-by-rule rather than interim status. At the time the UIC permit is reissued, the facility must address the corrective action requirements for all SMWUs in order to renew the RCRA permit-by-rule. This will require a RCRA "rider" permit addressing section 3004(u) corrective action for all SWMUs for the wells to continue to handle hazardous waste.

Similarly, new injection wells or other wells which have never qualified for interim status and do not have a permit, will require a UIC permit and a RCRA "rider" permit addressing section 3004(u) corrective action for all SWMUs before the wells can handle hazardous waste.

ii. *Section 144.1(h).* Under previous requirements, issuance of a UIC permit essentially constituted issuance of a RCRA permit-by-rule, and, thus, provided the well's RCRA authorization. The final rule of July 15, 1985 (50 FR 28702) at § 270.60(b), however, now provides that the permit-by-rule requires 1) a UIC permit *and* 2) compliance with § 270.60(b) requirements (including corrective action). Thus, obtaining a UIC permit in and of itself is not sufficient to move a well from interim status to having a permit-by-rule. Therefore, § 144.1(h) of this final rule provides that hazardous waste injection wells now operating under RCRA interim status may retain RCRA interim status after issuance of a UIC permit. Until a RCRA permit, or a RCRA "rider" to a UIC permit, which addresses section 3004(u) corrective action is issued, the well must comply with applicable interim status requirements imposed by § 265.430, and Parts 144, 146, and 147 (and any requirement imposed in the UIC permit).

In addition to finalizing § 144.1(h), today's rule deletes § 265.1(c)(2) from existing regulations as a necessary conforming change. Section 265.1(c)(2) had provided that interim status requirements do not apply to a UIC well once its UIC permit has been issued.

This requirement is no longer appropriate since a facility must now do more than obtain a UIC permit to obtain a RCRA permit-by-rule.

Several comments were received on the § 144.1(h) regulatory amendment as proposed. One commenter expressed concern that a facility may be able to receive a UIC permit and maintain interim status in perpetuity, *i.e.*, without any specified date for conducting corrective action. EPA disagrees with this comment. In the case of injection wells without surface units subject to RCRA permitting, EPA will require a RCRA permit-by-rule to address corrective action for surface SWMUs at the same time as the UIC permit is issued. This will consolidate any necessary corrective action and avoid duplicative permit proceedings. For wells with surface units operating under interim status, corrective action for all SWMUs will be addressed when the surface unit(s) is permitted. The permitting of these units is subject to the statutory deadlines of HSWA, and therefore cannot be delayed significantly.

Furthermore, EPA believes that requiring injection wells in interim status to address corrective action for surface units at the time the UIC permit is issued would be counterproductive. One of the Agency's fundamental objectives in implementing the RCRA corrective action program is to assign highest priority to those facilities having the most serious environmental problems. If the Agency did not provide for the continuation of interim status after issuance of the UIC permit, it would be required either to (a) delay issuance of the UIC permit until RCRA corrective action for surface units could be addressed, or (b) process the corrective action portion of the RCRA permit before other facilities which may have more serious environmental problems. The Agency does not believe that either situation would effectively serve overall protection of human health and the environment. In any case, however, if EPA identifies the need for corrective action at injection wells with interim status, it will address any problems through RCRA section 3008(h) or other enforcement authorities.

iii. *Section 144.31(g).* Today's rule finalizes § 144.31(g), which requires submission of available information regarding operating history and condition of the injection well, as well as any available information on known releases from the well or injection zone as part of the UIC permit process. The submission of this information will be used to evaluate the need for further investigations or corrective action for such releases. Site investigations will be required only to the extent necessary to follow up Agency concerns which arise during an evaluation of available information on the well.

One commenter expressed concern that, as proposed, § 144.31(g)(2) could require submission of unnecessary information simply because it was "available," and suggested that "relevant" be added to qualify the statement. Another was concerned that site investigations would be required (under § 144.31(g)(3)) without evidence to support a concern about a release from a unit. Because evaluating historic releases can be difficult and the information that may be useful will follow no set pattern, EPA believes it is reasonable, and not an undue burden, for the applicant to submit whatever is available concerning corrective action. Obviously EPA only seeks information which relates to the problem, but the Agency believes that all pre-existing information should be analyzed by the regulating agency, rather than just the applicant. The intent of the amendment is to provide the Agency with the necessary information from owners/operators to support determinations as to whether more extensive investigations should be conducted to verify and fully characterize releases, and to compel corrective actions as necessary. Section 144.31(g)(2) has, therefore, been finalized unchanged from the proposal. New site investigations under § 144.31(g)(3), however, would only be required where necessary to determine whether a release has occurred. EPA believes the standard in the proposed rule is appropriate and incorporates this standard in the final rule.

iv. *Section 270.60(b)(3)(ii).* Today's rule amends the permit-by-rule regulations of § 270.60 to require UIC facility owner/operators to submit certain information related to corrective action with their UIC applications. As discussed above, in a few cases, an injection well which requires a RCRA permit-by-rule may be the only unit at the facility which requires a RCRA permit. In such cases, information on SWMUs at the facility would not be obtained through a RCRA permit application process for a surface facility. The permit-by-rule must, therefore, be the vehicle for implementing corrective action at such facilities. Since information on SWMUs at the facility is necessary to develop any required corrective action conditions in a permit, EPA is persuaded that submission of this information (specified in today's rule at § 270.14(d)) should be a requirement for obtaining a permit-by-rule for hazardous waste injection wells. Submission of this information is a step which must occur prior to the issuance of the permit-by-rule. Only after corrective action schedules are written in a RCRA rider to the permit would the well have a permit-by-rule. The preamble to the March, 1986 proposal indicated that EPA was considering amending the permit-by-rule regulations (§ 270.60) to include such a requirement. Today's rule finalizes this requirement.

v. *Section 144.56 (Deleted).* Proposed § 144.56 has been deleted from this final rule. This section would have established, within the UIC regulations, corrective action requirements to implement section 3004(u) for the injection well through UIC permits. This proposed provision would have had the effect of implementing corrective action under RCRA section 3004(u) for the injection well under one permit, and for the surface units at the facility under a different permit at a different time. Upon further consideration, EPA has decided against adopting this approach. This decision is in keeping with the language of section 3004(u) which calls for corrective action to be addressed for the entire facility at the time the RCRA permit is issued. Section 3004(u) is a permit-related authority; EPA has concerns about the availability of this authority outside the context of a RCRA facility permit. Enforcement authorities under section 3008(h) and other authorities will be used as necessary to address corrective action at interim status facilities with injection wells prior to issuance of a RCRA permit.

vi. *Comments on Applicability of Section 3004(u) to Hazardous Waste Injection Wells.* Several commenters on the proposed rule suggested that section 3004(u) authority should not apply at all to facilities subject to permit-by-rule requirements. The Agency reaffirms its position, stated in the final codification rule issued on July 15, 1985 (50 FR 28712), that it sees no legal basis for departing from a literal reading of the statute, which appears to encompass *any* section 3005(c) permit within its mandate. Permits issued under section 3005(c) include those for any facility conducting or planning to conduct treatment, storage, or disposal of hazardous wastes. None of these comments argue that Class I wells are outside the bounds of the activities described; they argue that, because the units are seeking permits under the UIC program in 40 CFR Part 144, they are not seeking a permit under section 3005(c) of RCRA. Hazardous waste injection wells

seeking UIC permits are simultaneously seeking RCRA permits.

RCRA, as well as EPA regulations (40 CFR 270.1(c) (2) and (3)), contain exemptions to the section 3005(c) permitting requirements for specific types of facilities treating, storing, or disposing of hazardous waste. For example, section 3005(f) of RCRA specifically exempts facilities with coal mining wastes and reclamation permits from coverage by regulations promulgated under Subtitle C. Such a specific exclusion indicates that Congress consider which, if any, holders of other permits should be exempt from permitting under section 3005(c). Injection wells, however, are not specifically exempted by Congress, and, in fact, are specifically included as requiring a RCRA permit under 40 CFR 270.1(c)(1). The permit-by-rule was established to acknowledge that the standards already established under the Safe Drinking Water Act would constitute acceptable standards for RCRA section 3005(c).

One commenter suggested that EPA's proposed regulation regarding standards for managing recycled used oil (50 FR 49212, November 29, 1985) is inconsistent with the Agency position that corrective action applies to facilities subject to a RCRA permit-by-rule. However, the situation of recycled oil facilities differs significantly from that of UIC wells operating under a permit-by-rule. Section 3004(u) clearly states that corrective action must be addressed in permits issued under section 3005, which includes permits-by-rule for injection wells. The preamble to the proposed recycled used oil rule indicated that standards promulgated under section 3004(u) would not apply to certain recycled oil facilities. This is because recycled oil facilities are subject to permitting requirements under section 3014(d), rather than under section 3005(c). Therefore, the corrective action requirements of section 3004(u) do not apply. Further, the recycled oil proposal should not be considered a statement of final Agency policy; in a **Federal Register** notice at 51 FR 41903 (November 19, 1986), the Agency indicated that the used oil facility standards require further study before being finalized. The limited situation described in that proposal is not analogous to a facility with Class I underground injection wells which inject hazardous waste.

vii. *Comments on Migration Within Injection Zone.* Two commenters expressed concern that corrective action requirements for releases which migrate beyond the facility boundary, proposed in § 144.56(c), should not apply to wastes in the injection zone (a geological formation which may extend underground beyond the property boundary established on the surface). EPA has already stated in the preamble to the final codification rule issued on July 15, 1985 (see 50 FR 28712) that emplacement of liquids into an injection zone through a well does not constitute a *release* from a solid waste management unit, but rather is migration within a unit. Since RCRA corrective action requirements only apply to *releases* of hazardous waste or hazardous constituents from solid waste management units, the requirements do not apply to the wastes within an injection zone as described in the comments.

B. Permits

1. Permit Modifications

Section 270.41(a)(3) allows permits to be modified because of amended standards or regulations only if the permittee requests such modification. In the March 28, 1986 proposed rule, the Agency proposed to expand this provision in light of the recent statutory amendments to section 3005(c) of RCRA. This amendment allows EPA to initiate modifications to a permit without first receiving a request from the permittee, in cases where statutory changes or new or amended regulatory standards affect the basis of the permit.

Several commenters objected to the proposed rule on the grounds that it was unnecessary or would place permitted facilities in jeopardy of permit changes and would interfere with long-term planning. Some commenters suggested that EPA not initiate permit modifications except according to the schedule for the five-year or ten-year permit renewal. The Agency considered these comments but is promulgating this section as proposed. In order to minimize threats to human health and the environment, the Agency considers it important—and consistent with Congressional intent—to have the regulatory authority to modify RCRA permits when statutory changes or new regulations affect the standards on which the permits were based. Moreover, EPA does not believe that this requirement will unduly restrict planning efforts at RCRA facilities. Permit holders will be protected through standard rulemaking procedures against arbitrary or unnecessary changes, as well as by procedural protections built into the permit modification process. EPA does not intend to use this authority for minor procedural changes in regulatory requirements; rather, it is intended for significant amendments which may provide a substantial increase in protection of human health or the environment at a particular site.

The Agency also disagrees with those commenters who suggested that, to avoid potential abuse, EPA should codify specific conditions and criteria for reopening permits under this provision. The Agency believes that it would be unnecessarily time- and resource-consuming to issue specific guidance, criteria, or rules for its use. EPA will use this authority where it is necessary to protect human health and the environment, and does not believe that it should be limited to statutory provisions intended to have immediate effect, as one commenter suggested.

In a related activity, EPA has recently completed regulatory negotiations on RCRA permit modification with representatives of industry, States, and public interest groups, and will be issuing a proposed rule based on the results of these negotiations. While EPA's proposal on permit modifications may substantially alter modification procedures, it will retain the principle that EPA or an authorized State may initiate modification procedures in cases where permit conditions are inconsistent with new statutory or regulatory requirements.

2. Permit as a Shield

The March 28, 1986 proposed rule sought to amend the "permit as a shield" provision (§ 270.4(a)) to clarify that permittees must comply with new requirements that are imposed by statute and with the land disposal regulations promulgated in 40 CFR Part 268.

Several comments on this proposed amendment addressed the question of how new requirements would actually be imposed on the permittee; that is, whether or not permits would have to be modified, and whether or not authorized States would have to have adopted these requirements, for the requirements to be enforceable. EPA emphasizes that these requirements are self-implementing and they are effective—and enforceable—at RCRA facilities regardless of whether or not the facility's permit has specific conditions that require compliance, or, for changes imposed by HSWA, an authorized State has formally incorporated these requirements into its regulations (RCRA section 3006(g)). In fact, it is the responsibility of the owner/operator to comply with these requirements, even where there are contrary permit conditions (e.g., after certain specified dates, a land disposal facility is not

allowed to accept and dispose of a restricted waste, unless it has met the required treatment standard, regardless of the conditions stated in the facility's permit).

Because the statutory and regulatory requirements described in § 270.4(a) are effective regardless of permit conditions, EPA is not required to reopen existing permits to incorporate them and generally will not do so. However, permits issued after the effective date of a regulatory or statutory change would generally cite these requirements, so that their applicability would be clear both to the permittee and the public.

3. Permit Conditions as Necessary to Protect Human Health and the Environment

The March 28, 1986 proposed rule sought to amend the existing general permit application requirements under § 270.10 by adding a new paragraph (k) establishing the Administrator's authority to require information from permit applicants concerning permit conditions necessary to protect human health and the environment. The Agency previously codified the HSWA provision which allowed EPA to establish permit conditions necessary to protect human health and the environment in § 270.32(b) (section 3005(c)).

A number of commenters argued that EPA's "omnibus" authority under section 3005(c) should be limited to special or unique circumstances different from those addressed in the regulations (such as the permitting of hazardous waste disposal/storage in underground mines), or to additional permit conditions which are "absolutely necessary" and intended to be incorporated in all similar facility permits. The Agency does not agree with these interpretations. The language of section 3005(c) as amended by HSWA gives the Agency broad authority to impose permit conditions necessary to protect human health and the environment, and does not contain the limitations suggested by the commenters. As noted in the preamble to the July 15, 1985 final rule, the Agency believes the Congressional intent underlying this provision includes authorization to impose permit conditions beyond those mandated by the regulations. Thus, in specific circumstances where regulatory requirements may be inadequate, the Agency believes that the use of 3005(c) authority is not limited either to unique cases or to "absolutely necessary" conditions affecting all similar facilities.

EPA agrees with those commenters who stated that the authority to require submittal of information to support permit conditions that are imposed under the authority of § 270.32(b) should be used sparingly, and not for random and unjustified "fishing expeditions," or for conditions unrelated to hazardous waste activities. The Agency intends to use this requirement only where necessary to protect human health and the environment, and only to address specific environmental circumstances that are not adequately covered in existing regulations. Therefore, § 270.10(k) is finalized as proposed.

4. Post-closure Permits

i. Applicability and Effective Date

Section 3005(i) of RCRA requires that all landfills, surface impoundments, waste piles and land treatment units which received hazardous wastes after July 26, 1982, comply with the same groundwater monitoring, unsaturated zone monitoring, and corrective action requirements that apply to new units. To implement this requirement, EPA proposed an amendment to § 270.1(c) that would require post-closure permits for all land disposal units receiving hazardous wastes after that date. This proposed amendment was intended to establish consistency between the Part 264 groundwater protection requirements and the requirement to obtain post-closure permits. Previously, post-closure permits were required for land disposal units which closed after January 26, 1983, while new section 3005(i) imposed Part 264 Subpart F requirements on any land disposal unit which received wastes after July 26, 1982.

The Agency received numerous comments on this proposal. Several commenters supported the proposal, whereas others questioned EPA's basic authority to required post-closure permits for RCRA facilities in general, and specifically for surface impoundments which closed by removal under interim status. The commenters cited the language of § 270.1(c), which requires post-closure permits for units which are subject to post-closure care requirements of § 264.117. The commenters argued that impoundments which closed under interim status would not be required to receive post-closure permits, since they are not subject to § 264.117. EPD does not agree with the commenters who argue that EPA does not have authority to require RCRA permits for facilities during a "post-closure" period. See 47 FR 32291, 32292, 32336 (July 26, 1982). Furthermore, EPA has always intended that land disposal units that received waste after the effective date of Part 264 regulations must obtain permits and meet Part 264 requirements, even if they close under interim status (see 47 FR 32336 (July 26, 1982)). In additional, new section 3005(i) makes compliance with certain Part 264 rules a statutory requirement. Section 3005(i) subjects interim status regulated units to those ground-water monitoring, unsaturated zone monitoring and corrective action requirements which are applicable to new permitted units. Therefore, since a permitted unit would be required to meet permit conditions providing for post-closure care if closure by removal failed to meet the standard of § 264.228, interim status units must be treated in the same manner. EPA thus rejects the commenters' contention that post-closure permits cannot be required for units which closed under interim status. In today's final rule, the proposal to amend § 270.1(c) by eliminating the reference to § 264.117 has been adopted. This clarifies that units which close by removal under interim status rules are subject to post-closure requirements.

Several commenters argued that requiring post-closure permits for land disposal units that received wastes after July 26, 1982 increases the permit burden on the Agency and industry unnecessarily. Alternatives to the proposed post-closure permit requirement were suggested, including (1) amending Part 264 Subpart F so that it would apply only when a release is indicated by Part 265 monitoring, and (2) relying solely on the interim status closure and post-closure requirements of Part 265 to provide the requisite groundwater protection measures. Section 3005(i) prohibits both alternatives, since it requires units to meet the Part 264 standards. Furthermore, the Agency is persuaded that the groundwater protection standards of Part 264 provide a more environmentally protective mechanism for addressing goundwater protection at closed facilities than would be obtained through interim status closure and post-closure requirements.

Several commenters argued that the proposed rule would create a "loophole" in the applicability of post-closure permits. The proposal, in tying applicability of post-closure permits to the receipt of waste after July 26, 1982, would not have required post-closure permits for units which stopped receiving wastes prior to that date, but which did not complete closure until after January 26, 1983. Thus, some units which previously were subject to the post-closure permits requirement (i.e., that closed after 1/26/83), would be released from such requirements under the proposal. EPA agrees that such a loophole is not desirable. Therefore,

today's final rule differs from the proposed revision to § 270.1(c) by requiring post-closure permits for any landfill, surface impoundment, waste pile, or land treatment unit which received waste after July 26, 1982, *or* which closed after January 26, 1983. The term "closure" in this context has been clarified to mean certification of closure according to § 265.115. An exception to this post-closure permit requirement would be in the case of units which close by removal or decontamination according to the requirements of Part 264 (i.e., §§ 264.228, 264.258, 264.280(e): See following discussion).

ii. *Closure by Removal.* The preamble to the proposed rule also discussed how the proposal will affect regulated units which close by removal according to Part 265. The preamble acknowledged that permitted surface impoundments, waste piles, and land-treatment units need not conduct post-closure care under a post-closure permit if they satisfy the requirements for closure by removal or decontamination in §§ 264.228 (for surface impoundments), 264.258 (for waste piles), or 264.280(e) (for land treatment units). However, the interim status units that closed by removal under Part 265 standards as written prior to the recent promulgation of conforming changes to the Part 265 closure standards, may not meet Part 264 standards for closure by removal. Such units would retain post-closure responsibilities, including the requirement to obtain post-closure permits. The recent conforming changes rule made the interim status standards for closure by removal for surface impoundments equivalent to the permitting standards for surface impoundment closures. See 52 FR 8704 (March 19, 1987).

The preamble to the March 28, 1986 proposal requested comment on whether all facilities that closed by removal under Part 265 be considered subject to post-closure permitting requirements, or whether EPA should allow facilities to demonstrate that they complied with Part 264 closure standards, and thus do not require post-closure permits. A number of commenters supported the idea of a equivalency demonstration which would serve to establish whether a closed unit met the Part 264 standards, and which would be implemented through a process which EPA would define. One commenter suggested that EPA or the state should base the determination of equivalency on a review of the closure plan and its implementation. Another commenter supported the idea of using the post-closure permit application process to gather necessary information on which to base a determination of equivalency. Several commenters opposed an alternative to the post-closure permitting process for making such determinations, since they believed it would involve less public participation, lacked a corrective action "trigger," and would not assure that Part 264 standards were met.

After considering these comments, EPA has decided to use the Part B permit application process as the primary mechanism for collecting the information to allow a determination to be made as to whether a regulated unit which closed by removal or decontamination did so in compliance with the corresponding requirements of Part 264. The Part B application process is a well-established system for reviewing the types of groundwater, soil and other sampling and analytical data that will typically be required in determining the "equivalency" of interim status closure. However, the Agency has decided that an owner-operator should be allowed to demonstrate that a unit has been closed in accordance with the Part 264 closure by removal or decontamination standards, without having to submit a full Part B application for a post-closure permit. Therefore, the Agency is establishing a mechanism in today's rulemaking to allow such "equivalency demonstrations" to be made outside the Part B permit process.

As provided by § 270.1(c)(5)(ii) (promulgated today) an owner/operator may request the Regional Administrator to determine whether a post-cloture permit is required for a surface impoundment, waste pile or land treatment unit that closed according to Part 265 closure standards. These requests may be submitted at any time at the discretion of the owner/operator, including when EPA calls in the Part B post-closure permit application. If the owner or operator has not previously submitted a Part B permit application, he must provide sufficient information, including data on contaminant levels in soil and ground water, to demonstrate that the applicable Part 264 standards for closure by removal or decontamination have been met.

The Agency will review the information to determine whether the "equivalency" of the closure has been successfully demonstrated. If EPA determines that the interm status closure has met the appropriate Part 264 closure standard, a full Part B permit application will not be required to be submitted, nor will a post-closure permit be issued. The Agency will give public notice of such determinations and provide the opportunity for public comment using a procedure that parallels the closure plan approval procedures outlined in § 265.112(d)(4). If EPA determines that the closure does not meet the Part 264 standards, the owner/operator will be required to submit a Part B permit application containing all the applicable information in accordance with Part 270, and EPA will issue a post-closure permit. EPA anticipates that the number of "non-equivalent" interim status closures will decrease as the new conforming changes rule takes effect. This determination process will apply primarily to closures completed under the previous interim status rules.

It should be understood that the process of demonstrating equivalency of closure will not affect the due date of a Part B application once it has been requested. If a petition is submitted after a Part B has been requested, it may be difficult for the Agency, given the time required to review the data and process the petition, to make a determination well in advance of the Part B due date. This could create difficulties, especially when a petition is rejected, allowing little time for the owner/operator to prepare a Part B by the specified due date. The Agency therefore urges owners/operators who intend to submit equivalency demonstrations to do so before the facility's Part B is requested.

One commenter on the proposed rule raised concerns regarding facilities which are able to successfully demonstrate "equivalency" for a closed unit, and which thereby may not be required to obtain a post-closure permit for the facility. Specifically, the commenter noted that the absence of a permitting requirement would relieve the owner/operator of the responsibility for complying with section 3004(u) corrective requirements. The commenter further argued that, although such facilities will be subject to section 3008(h) interim status corrective action order authority, this enforcement authority is an "inadequate substitute" for section 3004(u) is obtaining corrective action.

EPA does not agree that the section 3008(h) authority is inadequate as a means of addressing necessary corrective action at facilities with units that have successfully demonstrated equivalent closure by removal. Section 3008(h) is substantially identical to section 3004(u) in terms of the type and scope of cleanup actions which can be required of facility owner/operators. Although procedurally the two authorities differ, and the enforcement authority is discretionary in the sense

that it is not automatically triggered upon issuance of a permit, it is the Agency's view that section 3008(h) can and will be used effectively to address necessary corrective action requirements at facilities which will not require post-closure permits due to "equivalent" closure.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to issue permits. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements are applied by EPA in authorized States in the interim.

Today's rule is promulgated pursuant to RCRA sections 3004(u), 3004(v) and 3005(i). These provisions were added by HSWA. Therefore, the Agency is adding the requirement to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 1993 (see § 271.24(c)).

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadline for State program modifications for this rule is July 1, 1989 (or July 1, 1990 if a state statutory change is needed). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations beings promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. The process and schedule for final State authorization applications is described in 40 CFR 271.3.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. However, none of the standards promulgated today are considered to be less stringent than or to reduce the scope of the existing Federal requirements.

V. Effective Dates

EPA believes it has a sound basis for suspending the statutory six-month effective date (RCRA section 3010(b)) for certain provisions promulgated today. HSWA amended section 3010(b) to provide that EPA may shorten or provide for an immediate effective date where (1) the regulated community does not need six months to come into compliance, (2) the regulation responds to an emergency situation, or (3) there is other good cause. Sections 144.1(h) and 265.1(c)(2) (which is deleted by this rule) are not new requirements but merely clarify that a UIC well may obtain a UIC permit under Part 144 but still maintain RCRA interim status. The sections outlining information necessary for corrective action permit decisions (§ 144.31(g), 270.14 (c) and (d), and 270.60(b)(3)(ii)) are necessary to process what is already a statutory requirement. In most cases the authority to request the information already exists. For other provisions of today's rulemaking relating to corrective action and permitting requirements, EPA believes that the regulated community does not need six months to come into compliance with these regulations. Therefore, §§ 265.1(c)(2), 270.1(c), 270.4(a) 270.10(k), 270.14 (c) and (d), 270.41(a)(3), 270.60(b)(3)(ii) and 271.1(j) will become effective in thirty days, as required by the Administrative Procedures Act, 5 U.S.C. 553(d).

In addition regulations pertaining to corrective action beyond the facility boundary (§§ 264.100(e) and 264.101(c)), implementing section 3004(v) of RCRA, will become effective on the date of promulgation. Section 3004(v) requires the Agency to amend its regulatory standards to address corrective actions beyond the facility boundary and states that these amendments "shall take effect immediately upon promulgation, notwithstanding section 3010(b) * * *."

VI. Regulatory Analyses

A. Regulatory Impact Analysis

Executive Order No. 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the order and "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule.

This rule establishes several information requirements, and merely codifies corrective action requirements for releases migrating beyond the property boundary. It does not however, establish the specific levels that facilities must meet in taking corrective actions. The Agency intends to specify these levels in a proposed rule being developed under section 3004(u) of RCRA, along with a complete assessment of the costs, impacts and benefits.

The regulatory impact analysis for today's rule, therefore, only addressed the costs associated with new information requirements. These information requirements alone do not impose costs that would make it a major rulemaking as defined by Executive Order No. 12291. This regulation is thus not considered to be a major rule.

A complete assessment of the impacts of the section 3004 (u) and (v) corrective action requirements which EPA anticipates to be major, will be addressed in the RIA that is now being prepared as part of the section 3004(u) regulations. The RIA will accompany the section 3004(u) rule when it is proposed.

This final rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, at the time an agency publishes any proposed or final rule in the **Federal Register**, it must prepare a Regulatory Flexibility Analysis which describes the impact of the rule on small businesses and organizations, unless the Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Agency has examined the final rule's potential impacts on small business and has concluded that this regulation will not have a signficant impact on a substantial number of small entities. In a cost analysis accompanying the March 28, 1986 proposal, EPA compared potential costs of compliance to its 1982 implementation criteria for a Regulatory Flexibility Analysis. Under the most stringent regulatory scenario, neither costs nor impacts of the proposed rule met the criteria for significant impact. Therefore, this final rule does not require a Regulatory Flexibility Analysis.

Accordingly, I hereby certify that this proposed rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must estimate the paperwork burden created by any information collection request contained in the proposed or final rule.

The information collection requirements in this final rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1980 and were assigned OMB Control Nos. 2050–0009, 2050–0002, and 2050–0007.

List of Subjects

40 CFR Part 144

Administrative practice and procedure, Confidential business information, Hazardous waste, Indian lands, Reporting and record-keeping requirements, Surety bonds, Water supply.

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

49 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: November 16, 1987.

Lee M. Thomas,

Administrator.

Therefore, Title 40 of the Code of Federal Regulations is amended as follows:

PART 144—REQUIREMENTS FOR THE UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for Part 144 is revised to read as follows:

Authority: 42 U.S.C. 300(f) et seq.; and 42 U.S.C. 6901 et seq.

2. In § 144.1, paragraph (h) is added to read as follows:

§ 144.1 Purpose and scope of Part 144.

* * * * *

(h) *Interim Status Under RCRA for Class I Hazardous Waste Injection Wells.* The minimum national standards which define acceptable injection of hazardous waste during the period of interim status under RCRA are set out in the applicable provisions of this Part, Parts 146 and 147, and § 265.430 of this chapter. The issuance of a UIC permit does not automatically terminate RCRA interim status. A Class I well's interim status does, however, automatically terminate upon issuance to that well of a RCRA permit, or upon the well's receiving a RCRA permit-by-rule under § 270.60(b) of this chapter. Thus, until a Class I well injecting hazardous waste receives a RCRA permit or RCRA permit-by-rule, the well's interim status requirements are the applicable requirements imposed pursuant to this Part and Parts 146, 147, and 265 of this chapter, including any requirements imposed in the UIC permit.

3. In § 144.31, paragraph (g) is revised to read as follows:

§ 144.31 Application for a permit; authorization by permit.

* * * * *

(g) *Information Requirements for Class I Hazardous Waste Injection Wells Permits.* (1) The following information is required for each active Class I hazardous waste injection well at a facility seeking a UIC permit:

(i) Dates well was operated.

(ii) Specification of all wastes which have been injected in the well, if available.

(2) The owner or operator of any facility containing one or more active hazardous waste injection wells must submit all available information pertaining to any release of hazardous waste or constituents from any active hazardous waste injection well at the facility.

(3) The owner or operator of any facility containing one or more active Class I hazardous waste injection wells must conduct such preliminary site investigations as are necessary to determine whether a release is occurring, has occurred, or is likely to have occurred.

PART 264—STANDARDS FOR THE OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

4. The authority citation for Part 264 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

5. Section 264.100 is amended by redesignating paragraph (e) (1) and (2) as (e) (3) and (4), by adding new paragraphs (e) (1) and (2), and by revising the introductory text of paragraph (e) to read as follows:

§ 264.100 Corrective action program.

* * * * *

(e) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents under § 264.93 that exceed concentration limits under § 264.94 in groundwater:

(1) Between the compliance point under § 264.95 and the downgradient property boundary; and

(2) Beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Regional Administrator that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis.

* * * * *

6. In § 264.101, paragraph (c) is added to read as follows:

§ 264.101 Corrective action for solid waste management units.

* * * * *

(c) The owner or operator must implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Regional Administrator that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action must be provided.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

7. The authority citation for Part 265 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

§ 265.1 [Amended].

8. In § 265.1 paragraph (c)(2) is removed and reserved.

PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

9. The authority citation for Part 270 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

10. In § 270.1, the introductory text of paragraph (c) is revised and paragraphs (c)(5) and (c)(6) are added to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) *Scope of the RCRA Permit Requirement.* RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in 40 CFR Part 261. The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in § 270.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to § 265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided under § 270.1(c) (5) and (6). If a post-closure permit is required, the permit must address applicable Part 264 Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements of this chapter.

* * * * *

(5) *Closure by removal.* Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under Part 265 standards must obtain a post-closure permit unless they can demonstrate to the Regional Administrator that the closure met the standards for closure by removal or decontamination in § 264.228, § 264.280(e), or § 264.258, respectively. The demonstration may be made in the following ways:

(i) If the owner/operator has submitted a Part B application for a post-closure permit, the owner/operator may request a determination, based on information contained in the application, that section 264 closure by removal standards were met. If the Regional Administrator believes that § 264 standards were met, he/she will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in paragraph (c)(6) of this section.

(ii) If the owner/operator has not submitted a Part B application for a post-closure permit, the owner/operator may petition the Regional Administrator for a determination that a post-closure permit is not required because the closure met the applicable Part 264 closure standards.

(A) The petition must include data demonstrating that closure by removal or decontamination standards were met, or it must demonstrate that the unit closed under State requirements that met or exceeded the applicable 264 closure-by-removal standard.

(B) The Regional Administrator shall approve or deny the petition according to the procedures outlined in paragraph (c)(6) of this section.

(6) *Procedures for closure equivalency determination.* (i) If a facility owner/operator seeks an equivalency demonstration under § 270.1(c)(5), the Regional Administrator will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner/operator within 30 days from the date of the notice. The Regional Administrator will also, in response to a request or at his/her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the Part 265 closure to a Part 264 closure. The Regional Administrator will give public notice of the hearing at least 30 days before it

occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.)

(ii) The Regional Administrator will determine whether the Part 265 closure met 264 closure by removal or decontamination requirements within 90 days of its receipt. If the Regional Administrator finds that the closure did not meet the applicable Part 264 standards, he/she will provide the owner/operator with a written statement of the reasons why the closure failed to meet Part 264 standards. The owner/operator may submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The Regional Administrator will review any additional information submitted and make a final determination within 60 days.

(iii) If the Regional Administrator determines that the facility did not close in accordance with Part 264 closure by removal standards, the facility is subject to post-closure permitting requirements.

11. In § 270.4, paragraph (a) is revised to read as follows:

§ 270.4 Effect of a permit.

(a) Compliance with an RCRA permit during its term constitutes compliance for purpose of enforcement, with Subtitle C of RCRA except for those requirements not included in the permit which become effective by statute, or which are promulgated under Part 268 of this chapter restricting the placement of hazardous wastes in or on the land.

* * * * *

12. In § 270.10, paragraph (k) is added and an OMB number is added at the end of the section to read as follows:

§ 270.10 General application requirements.

* * * * *

(k) The Director may require a permittee or an applicant to submit information in order to establish permit conditions under §§ 270.32(b)(2) and 270.50(d) of this chapter.

(Approved by the Office of Management and Budget under control numbers 2050–0009, 2050–0002, and 2050–0007)

13. In § 270.14, the introductory text of paragraph (c) is revised, paragraph (d) is added and an OMB number is added at the end of the section to read as follows:

§ 270.14 Contents of Part B: General requirements.

* * * * *

(c) *Additional information requirements.* The following additional information regarding protection of groundwater is required from owners or operators of hazardous waste facilities containing a regulated unit except as provided in § 264.90(b) of this chapter:

* * * * *

(d) Information requirements for solid waste management units.

(1) The following information is required for each solid waste management unit at a facility seeking a permit:

(i) The location of the unit on the topographic map required under paragraph (b)(19) of this section.

(ii) Designation of type of unit.

(iii) General dimensions and structural description (supply any available drawings).

(iv) When the unit was operated.

(v) Specification of all wastes that have been managed at the unit, to the extent available.

(2) The owner or operator of any facility containing one or more solid waste management units must submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.

(3) The owner/operator must conduct and provide the results of sampling and analysis of groundwater, landsurface, and subsurface strata, surface water, or air, which may include the installation of wells, where the Director ascertains it is necessary to complete a RCRA Facility Assessment that will determine if a more complete investigation is necessary.

(Approved by the Office of Management and Budget under control numbers 2050–0009, 2050–0002, and 2050–0007)

14. In § 270.41, paragraph (a)(3) is revised to read as follows:

§ 270.41 Major modification or revocation and reissuance of permits.

* * * * *

(a) * * *

(3) *New statutory requirements or regulations.* The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause as follows:

(i) Director may modify the permit when the standards or regulations on which the permit was based have been changed by statute or amended standards or regulations.

(ii) Permittee may request modification when:

(A) The permit condition to be modified was based on a promulgated regulation under Parts 124 of this chapter, Parts 260—268 of this chapter, or Part 270 of this chapter; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based; or

(C) A permittee requests modification in accordance with § 124.5 of this chapter within 90 days after **Federal Register** notice of the action on which the request is based.

(iii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA-promulgated regulations if the remand and stay concern that portion of the regulations on which the permit condition was based or if a request is filed by the permittee in accordance with § 124.5 of this chapter within 90 days of judicial remand.

* * * * *

15. In § 270.60, paragraph (b)(3) is revised and an OMB number is added at the end of the section to read as follows:

§ 270.60 Permits by rule.

* * * * *

(b) * * *

(3) For UIC permits issued after November 8, 1984:

(i) Complies with 40 CFR 264.101; and

(ii) Where the UIC well is the only unit at a facility which requires a RCRA permit, complies with 40 CFR 270.14(d).

* * * * *

(Approved by the Office of Management and Budget under control number 2050–0007)

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

16. The authority citation for Part 271 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

17. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope

* * * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register	Effective date
[*insert date of publication*].	Codification Rule for the 1984 RCRA Amendments.	[insert *FR* reference].	[*insert thirty days after publication.*

* * * * *

[FR Doc. 87–27000 Filed 11–30–87; 8:45 am]

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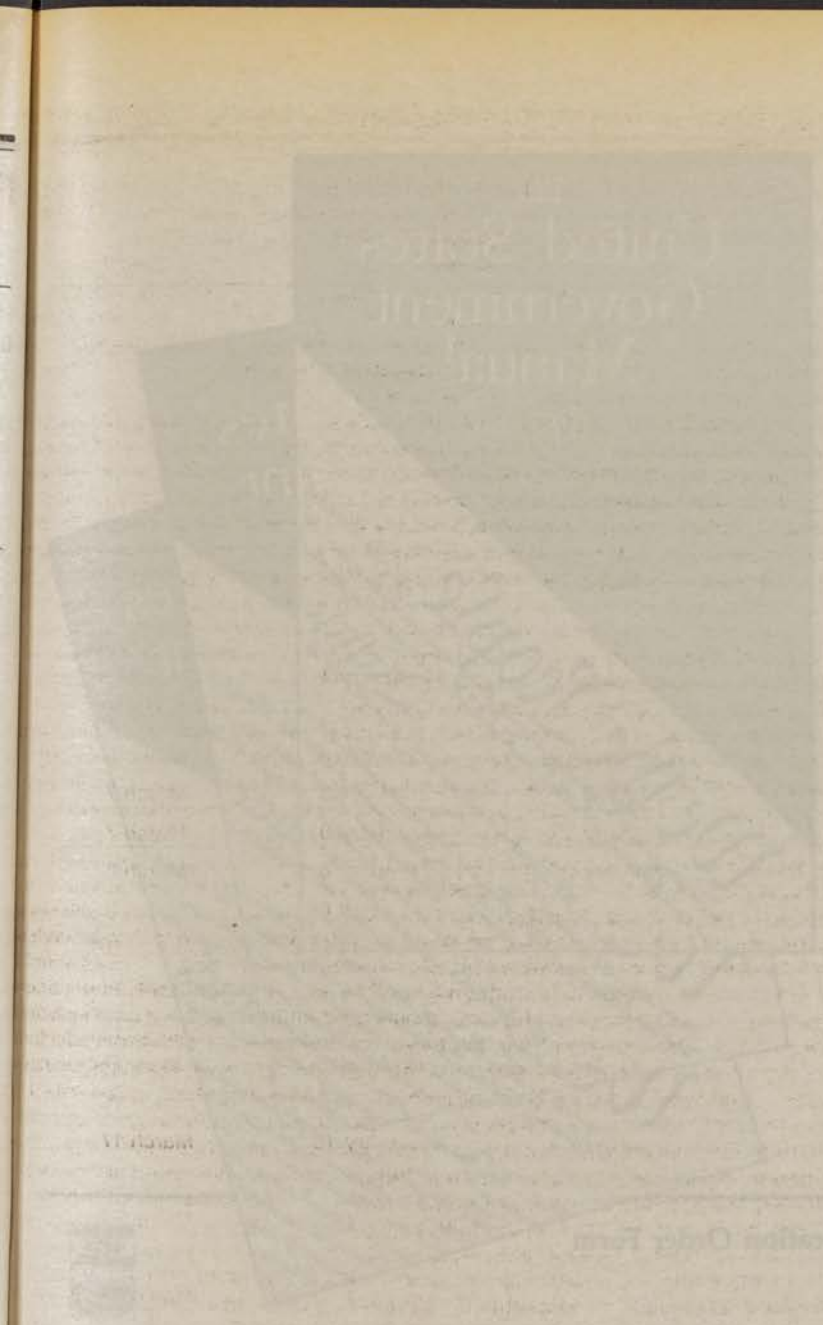
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December 4	December 21	January 4	January 19	February 2	March 3
December 7	December 22	January 6	January 21	February 5	March 7
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December 11	December 28	January 11	January 25	February 9	March 10
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December 17	January 4	January 19	February 1	February 16	March 16
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December 23	January 7	January 22	February 8	February 22	March 22
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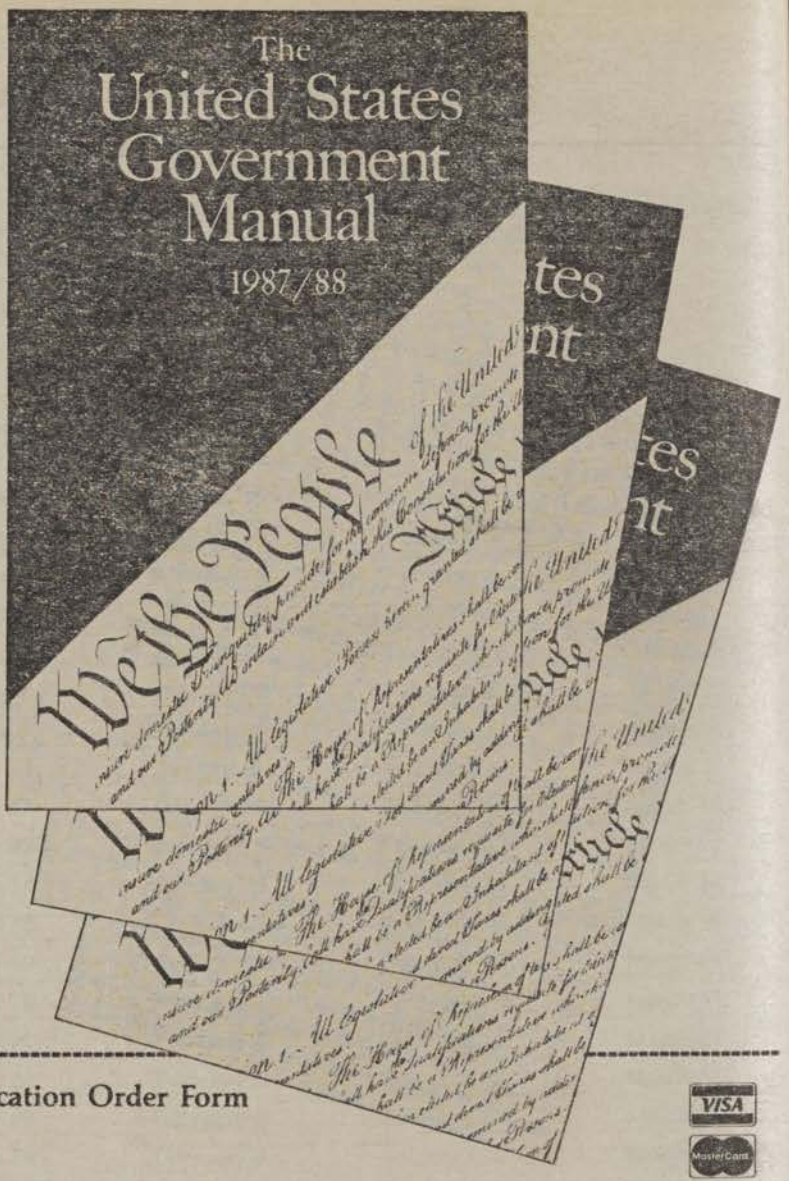
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