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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan; Correction

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Correction to interim regulations.

SUMMARY: This document contains a correction to interim regulations which were published Friday, December 4, 1992, (57 FR 57321). The regulations related to the waiver of certain requirements for participants to obtain the signature of a spouse in connection with the withdrawal of funds from the Thrift Savings Plan.

EFFECTIVE DATE: December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, (202) 942–1662 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The interim regulations that are the subject of this correction ensure that documentation submitted in support of waiver requests based on whereabouts unknown and exceptional circumstances is reliable.

Need for Correction

As published, the interim regulations revised § 1650.21(b) to include the introductory text of § 1650.21(c) but did not contain the instruction to delete the introductory text of § 1650.21(c).

Correction of Publication

Accordingly, the publication on December 4, 1992, of the interim regulations which were the subject of FR Doc. 92–29287, is corrected as follows:

§ 1650.21 [Corrected]

Paragraph 1. On page 57322 instruction 3 is amended to add at the end thereof "and the introductory text of § 1650.21(c) is removed."

Francis X. Cavanaugh,
Executive Director.

[FR Doc. 92–30720 Filed 12–17–92; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 180

[CS–91–011]

Plant Variety Protection Act: Increase of Certification Fee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action finalizes the proposed rule published in the **Federal Register**, September 3, 1991, which proposed amending the regulations under the Plant Variety Protection act (Act) of 1970 as amended to issue corrected certificates rather than certificates of correction and to increase the fees for plant variety protection certification services to keep the administration of the Act self-supporting.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Evans; Commissioner; Plant Variety Protection Office; Science Division; Agricultural Marketing Service; National Agricultural Library Building; Room 500; Beltsville; Maryland 20705; telephone: (301) 504–5518.

SUPPLEMENTARY INFORMATION: The Plant Variety Protection Act of 1970, as amended, (7 U.S.C. 2321 *et seq*) (Act) provides for the assessment and collection of reasonable fees for expenses incurred by the Department of Agriculture for the issuance of plant variety protection certificates and for related services. On December 22, 1987, the Act was amended to provide that fees, including late payments and accrued interest, shall be credited to the account that accrues the costs and shall remain available without fiscal year limitation to pay the costs incurred. Present fees will not cover the projected costs for fiscal year 1992. Therefore, the Department increases total fees for processing an application to $2,600. The Act also provides for issuing a corrected certificate when a correction is made in the certificate. The regulations are being changed to conform with the language of the Act to provide for the issuance of a corrected certificate. Previously the regulations provided for both corrected certificates and certificates of correction.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be "non-major." It will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in production costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor will it have a significant effect on competition, employment, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provision of this rule.

The Administrator of the Agricultural Marketing Service has determined that this rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*), because (1) the fee represents a minimal increase of $200 in the costs of developing and producing a new variety for the commercial market; and (2) competitive effects are offset under this voluntary program since charges are based on volume (i.e., the cost to users varies in proportion to the number of applications submitted).

This regulation does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

From fiscal year 1981 to fiscal year 1984, the cost to the agency of processing an application was reduced

from approximately $3,600 to $2,000; and fees were increased from $750 to $1,500 and then in 1984 to $2,000 to make the program self-supporting. From the time of the 1984 fee increase to fiscal year 1988, operating costs attributed to the program rose 35 percent and fees were increased to $2,400 per certificate. Projected revenues for 1992 are estimated to be 10 percent below projected costs.

On February 6 and 7, 1991, the Plant Variety Protection Advisory Board (Board) met and was provided information concerning increased costs which would be incurred by the Department in processing an application for a plant variety protection certificate during fiscal year 1992. This information was provided to support the Plant Variety Protection Office's recommendation for a fee increase to fully fund the program. The Board recommended that fees be raised at this time, but indicated that some members felt that certain plant variety protection activities should be funded by appropriated funds, and that the program should be prepared to process an increasing number of applications.

Fees collected under the program must be sufficient to fully fund the costs of the program. Under legislation passed December 22, 1987, the Plant Variety Protection Office was converted to a user-fee trust fund program in which all moneys collected are deposited in an account designated for funding the program and are not returned to the general Treasury.

Therefore, in view of the increase in costs incurred by the agency, the Department proposes an increase in the fee charged per certificate from $2,400 to $2,600. This fee increase is necessary to keep the Plant Variety Protection Office funded on a fully user-fee basis to conform with the intent of the Act.

Alternatives to increasing the fees were considered by the agency, and found not to be feasible. For example, reducing agency staff would not be a feasible alternative to increasing fees since the output per person would stay the same. The backlog would increase as well as the time period ineligible varieties are protected under the protection-applied-for status. The financial burden of the Government also would be increased by the amount the backlog grows. In addition, reducing the staff would not decrease overhead or supervisory costs.

Also not viable as an alternative is reducing the amount of supervision and review of plant examiners' work by the Commissioner or eliminating the placement of information on new varieties in the computer file Either of these actions would increase the probability of issuing certificates on ineligible applications, which would adversely affect the integrity of the program.

No comments were received on the proposed rule published on September 3, 1991, in the **Federal Register**. Accordingly, the regulations are amended as provided in this final rule.

List of Subjects in 7 CFR Part 180

Administrative practice and procedure, Labeling, Plants.

Accordingly, for the reasons set forth in the preamble, 7 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: Secs. 6, 22, 23, 26, 31, 42(b), 43, 56, 57, 91(c), 84 Stat. 1542; 7 U.S.C. 2326, 2352, 2353, 2356, 2371, 2402(b), 2403, 2426, 2427, 2501(c); 29 FR 16210, as amended, 37 FR 6327, 6505; U.S.C. 2371.

2. Sections 180.120 and 180.121 are revised to read as follows:

§ 180.120 Corrected certificate—Office mistake.

When a certificate is incorrect because of a mistake in the Office and upon return of the certificate to the Office, the Secretary may issue a corrected certificate stating the fact and nature of such mistake, without charge, to be issued to the owner in accordance with section 84 of the Act and recorded in the Office.

§ 180.121 Corrected certificate—applicant's mistake.

When a certificate is incorrect because of a mistake by the applicant of a clerical or typographical nature, or of minor character, or in the description of the variety (including, but not limited to, the use of a misleading variety name or a name assigned to a different variety of the same species), and the mistake is found by the Office to have occurred in good faith and does not require a further examination, the Secretary may, upon payment of the required fee and return of the original certificate, correct the certificate by issuing a corrected certificate, in accordance with section 85 of the Act. If the mistake requires a reexamination, a correction of the certificate shall be dependent on the results of the reexamination.

3. Section 180.175 is revised to read as follows:

§ 180.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

(a) Filing the application and notifying public of filing $275
(b) Search or examination 2,050
(c) Allowance and issuance of certificate and notifying public of issuance 275
(d) Revive an abandoned application 275
(e) Reproduction of records, drawings, certificates, exhibits, or printed material (copy per page of material) 1
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(l) Additional fee for late replenishment of seed 25
(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision) 2,600

(n) Field inspections by a representative of the Plant Variety Protection Office made at the request of the applicant shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulations.

(o) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $40 per employee-hour.

* * * * *

Dated: December 11, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92-30691 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amendment No. 340]

Food Stamp Program; Employment and Training Provisions From the Mickey Leland Memorial Domestic Hunger Relief Act

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On August 15, 1991, the Department published a rulemaking that proposed several provisions affecting the Food Stamp Program's Employment and Training (E&T) requirements based upon provisions from the Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101-624, November 28, 1990). The rulemaking also proposed to change the date by which the State agencies must submit E&T

plans to the Department. In addition, the rulemaking proposed to change to the current procedures for handling certain child care reimbursements which are issued by the Aid to Families with Dependent Children Program (AFDC). This rule addresses significant comments and finalizes certain provisions in the proposed rulemaking. A technical correction is also included in this rule.

EFFECTIVE DATE: The provisions at § 273.7(d)(1)(i) (A) and (B) are effective retroactive to October 1, 1991. The provision at § 273.7(c)(4)(viii) is effective January 19, 1993 and must be implemented by August 15, 1993. The provision at § 273.10(d)(1)(i) is effective and must be implemented by March 1, 1993. All other provisions are effective and must be implemented retroactively to February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Henigan, Supervisor, Work Program Section, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305-2762.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum No. 1512-1

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

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

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

(1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15;

(2) For State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities);

(3) For program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Phyllis R. Gault, Acting Administrator of the Food and Nutrition Service (FNS), has certified that this action does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected because they administer the Program.

Paperwork Reduction Act

This final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Title: Application Processing.

Description: The burden associated with Program application and application processing and the eligibility, certification, and continued eligibility of Program applicants is currently approved under OMB No. 0584-0064. The requirement in § 273.1(d) of this final action that specifies that certain households must be allowed to choose their "head of household" does not alter or change the current burden estimates for applicant households. Current burden estimates already take into consideration that a "head of household" must be designated for every household by the State agency or the household, as required by regulation.

The requirement at § 273.1(d) in this final rule specifies that the State agencies must provide a written notice to all households as appropriate. The notice must identify which households have the option to select their head of household, the circumstances under which a household may change its designation, and how such changes must be reported to the State agency. It is anticipated that the State agencies will choose to implement this requirement by revising their notices for advising recipients of their rights and responsibilities. The estimated reporting burden for this provision is minimal. Because the estimated burden is minimal, it will be submitted to OMB for approval along with the Department's upcoming revision to all burdens associated with OMB No. 0584-0064, which expires in the near future.

Title: Revision to E&T Plan.

Description: State welfare agencies are required, pursuant to 7 CFR 272.2 to plan and budget program operations and establish objectives for the next year. The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, the Program Activity Statement, and certain attachments as specified at 7 CFR 272.2 (c) and (d). One such attachment to the Plan of Operation is the E&T plan.

This final rule contains a requirement at § 273.7(c)(4)(viii) which requires that the State agencies specify their methodology for reporting accurate work registrant information. The requirement at § 273.7(c)(4)(viii) of this action does not alter or change current burden estimates approved under OMB No. 0584-0083 for the overall Plan of Operation. Certain portions of the State Plan are required to be updated annually; including the E&T plan, while others are required to be updated when a significant change occurs. The revision to the Plan of Operation that may result from this action is not required to be submitted separately from the annual update. The current burden approval for the Plan of Operation estimates that State agencies will submit State Plan of Operation revisions or updates to various components of the

State Plan of Operation at least once annually, regardless of the reason for the revision/update.

Description of Respondents: 53 State Welfare Agencies.

Estimated Annual Reporting and Recordkeeping Burden: Current burden estimates associated with the need for 53 State welfare agencies to submit revisions/updates on various components of the State Plan of Operation at least once annually is estimated to average 10 hours, per respondent, for a total burden of 530 hours annually.

Background

The Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624) was enacted on November 28, 1990. Title XVII of this Act, entitled the "Mickey Leland Memorial Domestic Hunger Relief Act", contains numerous provisions affecting the Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032).

On August 15, 1991, the Department published a rulemaking (56 FR 40570) that proposed to implement provisions of Public Law 101–624 affecting the Food Stamp Employment and Training (E&T) Program. The proposal would: (1) Amend the definition of head of household designation for E&T and voluntary quit purposes; (2) change the current formula for distributing the non-performance based portion of the $75 million Federal E&T grant; (3) expand the E&T program to include literacy and self-employment training as E&T components; and (4) allow two State agencies, with prior approval by FNS, to provide priority service to volunteers. The proposed rule also included two administrative provisions and several technical amendments. This action incorporates comments on the proposed rule and puts a number of the proposed amendments into final regulatory form.

The Department received nineteen comment letters on the proposed rule. Most of the comments were from State welfare agencies. The Department also received comments from two public interest groups and one State Legislature. The comments were thorough and well documented and the Department appreciates the effort which went into their preparation and submission. All comment letters received by September 16, 1991 were given full consideration for inclusion in this final rulemaking. All others were read and considered.

The provisions of this final rule are discussed in this preamble. For supplementary information on the issues involved, the reader should refer to the preamble of the proposed rule (56 FR 40570), which discusses related policy issues and contains the rationale for the content of the rule.

Designating the Head of Household—7 CFR 273.1(d)

In accordance with the amendment made by Section 1725 of Public Law 101–624, the proposed rule included a provision that would allow households to select an adult parent of children as the head of household provided all the adult household members agree to the selection. The selection could be made at each certification action or whenever there is a change in household composition.

The Department received numerous comments objecting to this provision. Most expressed concern that the provision would increase work for caseworkers, confuse food stamp applicants, complicate verification requirements and delay certification actions. The commenters also asserted that the provision would complicate current policy by allowing some households the right to designate their head of household, while the principal wage earner would be the criteria imposed on others to determine the head of household. Commenters further expressed concern that the provision would undermine program integrity by allowing certain households to select someone other than the principal wage earner as their head. To lessen the complexity of the provision, some commenters suggested that all households be given the same right of selection.

The Department recognizes that the policy surrounding the head of household designation is complex. However, Section 1725 of Public Law 101–624 clearly limits the designation selection to households with adult parents of children. Although the proposed rule would have applied the selection option to adults who have parental control over children, any further extension would exceed Congressional intent. Also, as discussed in the preamble to the proposed rule, allowing all households the option to designate their head would further undermine the intent of the voluntary quit provisions under section 6(d) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2015(d)).

Accordingly, the Department is adopting the proposed version of 7 CFR 273.1(d) specifying that the State agency must provide households with an adult parent of children or an adult who has parental control over children the option of selecting such a person as the head of household.

In response to concerns that the provision may delay the application process, the Department is amending 7 CFR 273.1(d) in this final rule to specify that the State agency shall not deny an otherwise eligible household or delay the certification action if the household fails to designate its head of household. Households that fail to select an adult parent as head shall lose their right to this delegation option and shall be treated in accordance with current rules as specified at 7 CFR 273.1(d). In these instances, the State agency would designate the household's principal wage earner as the head of household if E&T or voluntary quit violations occur.

As previously discussed, households must be allowed to re-designate their head of household at each certification action or whenever there is a change in household composition. One commenter suggested that the household should only be allowed to re-designate a new head of household whenever there is a change in the adult members of the household.

The Department believes that the law is specific in allowing the option for a household to select an adult parent as its head whenever there is any change in household composition. Even though the addition of a non-adult member would not change the household's composition of adult members, the addition may cause household responsibilities to shift in a manner that would result in the household's desire to re-designate its head. For instance, a household may want to re-designate a husband as its head of household when the wife, who was previously designated as the head, gives birth to a child. Accordingly, the Department is adopting 7 CFR 273.1(d)(1), in this final rule to specify that households have the option of designating an adult parent of children, or an adult who has parental control over children, whenever there is a change in household composition.

Several commenters suggested that the regulation specify that there is no age limit. Because the statutory amendment under section 1725 of Public Law 101–624 does not include an age limit with respect to parental control, the Department is modifying the proposed rule at § 273.1(d)(1) to specify that, regardless of the child's age, households may select an adult parent of children as the head of household. However, because parental control is limited to control of children under 18 years of age, the final rule is also modified to specify that the household may select an adult who has parental control over children under 18 years of age.

Many commenters requested clarification on the proposed notice requirements associated with the head of household designation option. As proposed at § 273.1(d)(1), the State agencies would have to advise all households in writing at the time of application and as otherwise appropriate of the option certain households have in selecting their head of household. The notice would have to clearly identify those households which have the option, when the option is available, and how changes in the head of household designation must be reported to the State agency.

Commenters requested guidance on how agreement of all adult household members should be documented or verified. One commenter asked if the State agency could establish a timeframe for household responses. One commenter asked if the proposed provision required a new consent form. One commenter asked if a signed agreement would be required from all adult household members. Another commenter suggested that the Department require the notice to state why the head of household selection is made and what effect the decision could have on the household if the selected head failed to cooperate with E&T requirements or voluntarily quit a job.

The Department would like to give the State agencies flexibility in designing their notice or verification requirements. Therefore, provided all households are notified of the designation option as stated in the proposed rule at § 273.1(d)(1), a State agency may determine how to document the household's designation within its own application and notice requirements. The notice can be combined with other notices, included on the application or a stand alone document. The State agency may further determine how to document or verify the consent of all household adults. Although the Department does not believe all adult members must sign a statement indicating their concurrence with the selection, State agencies may develop these procedures if they so desire. However, as previously stated, these procedures must not delay the household's certification or result in denied benefits if the verification is not returned within the application processing timeframes. Accordingly, the proposed notice requirement at § 273.1(d)(1) is adopted in this final rule without change.

In the event that all adults do not agree to the selection, the proposed rule at § 273.1(d)(1) specified that the State agency would designate the head of household or allow the household to make another selection. One commenter suggested that the Department clarify what other selections are available or specify that the State agency shall make the designation when the adult members cannot agree. Another commenter maintained that the State agencies should not have the authority to designate the head of household if the adult household members do not agree to the selection because the option will result in too many variations.

Under current rules at 7 CFR 273.1(d), the State agency may select the head of household or allow the household to do so. The intent of the proposed rule was to allow the State agencies to revert to these current procedures whenever a household which has the option to select an adult parent as its head fails to do so. Therefore, the State agencies have the flexibility to implement a policy which, in these instances, allows: (1) The State agency to designate the head of household; or (2) allows the household to make another selection.

Accordingly, the Department is adopting the proposed provision at § 273.1(d)(1) that specifies what action must be taken if all adult members do not agree to the selection in this final rule. The Department believes the proposed procedures provide the State agencies with flexibility and lessen administrative complexities.

Under section 1725 Public Law 101–624, households must be permitted to select an adult parent of children as their head of household. The Department's proposal would have applied the option to designate a head of household to adults who have parental control over children. One commenter requested that the Department define "parental control." Another commenter asked if parental control would have to be verified.

The Department is not including a definition of "parental control" in this final rulemaking. However, the Department's policy has been that parental control refers to adults who supervise minors who are dependents, financial or otherwise, of the household as opposed to independent units.

The final rule does not require the State agencies to verify parental control. The State agencies may establish verification requirements if they wish provided that certification is not delayed or denied for lack of verification of parental control.

One commenter questioned whether or not the proposed provision would affect the current regulation at 7 CFR 273.1(d)(2) that prohibits the State agency from designating a child of any age as the head of household if certain conditions exist. As specified under this current rule, these conditions exist if the child is living with a parent, or person fulfilling the role of a parent, who is registered for work or exempt from work registration requirements because the parent is: (1) Subject to and participating in any work requirement under Title IV of the Social Security Act; (2) in receipt of unemployment compensation; (3) registered for work as part of the unemployment compensation or has registered for work as part of the application process; or (4) employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours. Although the proposed rule did not address the effect the designation option would have on this current rule, the Department believes that this sentence must be revised to clarify that the household has the choice to select an adult parent as its head of household even if the adult parent meets the conditions specified in the current regulations. Therefore, the final rule amends § 273.1(d)(2) to clarify that the household has the option to select an adult parent who meets the criteria specified under this section as its head of household if all adult members of the household agree to this selection.

The proposed rule included an amendment to § 273.7(g) specifying the effect the statutory provision will have in situations when a noncompliant head of household moves from one food stamp household to another. Under current rules, a sanction is imposed on the new household if the new member is designated as the head of household. The proposed rule specified that the new member could not be designated as the head of household by the State agency in instances where the new household has already selected an adult parent as its head *unless* the new household elects to choose the newly joining individual as its head.

Several commenters expressed their support of this provision. Accordingly, the Department is adopting the amendments at 7 CFR 273.7(g) as proposed in this final rule.

Many commenters submitted a number of specific questions related to the designation of the head of household. The Department is providing the following responses to these questions.

Question—Is the household allowed to designate someone other than the adult parent of children as the head of household? For example, if the household does not want the adult parent as its head, can the State agency allow the household to select someone else?

Answer: Yes, the State agency may allow the household to select someone else if the household does not want to select the household's adult parent of children as its head. However, for the purposes of determining compliance with E&T and voluntary quit provisions, the State agency must consider the household's principal wage earner as the head of household unless the household selected an adult parent of children.

Question: Does the new head of household rule take precedence over the principal wage earner?

Answer: The State agency may not designate the household's principal wage earner as the head of household if the household has selected another adult parent of children as its head.

Question: May a household which has an adult parent of children who is the principal wage earner designate a different adult parent of children as the head of household? If so, would the entire household be disqualified if the principal wage earner voluntarily quit a job?

Answer: The household may select any adult parent of children as its head of household provided all adult household members agree to the selection. If the household selected an adult parent of children as its head of household over the household's principal wage earner and the principal wage earner quit his or her job, the State agency would have to consider the selected adult parent as the head of household when determining if a voluntary quit violation occurred. In this instance, a voluntary quit violation does not exist because it was not the head of household who quit the job.

Question: Is a designation binding for sanction purposes if the adult household members do not agree to select the adult parent of children as the head and the State agency designates another head of household?

Answer: The State agency shall consider the principal wage earner as head of household for E&T and voluntary quit unless the household has selected an adult parent of children as its head and all adult members agree to the selection. The selection would then be binding.

Question: Why is the household's selection as head of household required in project areas in which no E&T program exists?

Answer: The consequences of establishing the head of household extend beyond the scope of the E&T program. The new provisions affect the voluntary quit requirements as specified at 7 CFR 273.7(n). They also apply, as specified under § 273.7(g) in this final rule, when a head of household, who has been sanctioned for either an E&T or voluntary quit violation, moves to another household. If the household receiving the sanctioned individual is deprived of its right to select its head, because no E&T program is operating in its project area, the household receiving the sanctioned head of household may be disqualified from the program.

If given the option, the household might have selected an adult parent in the household its head rather than have the new member, by virtue of his or her wages, be designated as head.

Distribution of Nonperformance-Based Federal E&T Funds—7 CFR 273.7(d)

The proposed rule included a provision from section 1753 of Public Law 101–624 which requires the Department, as of Fiscal Year 1993, to distribute the nonperformance-based Federal E&T grant ($60 Million) on the basis of each State agency's percentage of work registrants compared to the number of work registrants nationwide. Prior to this amendment, the Department distributed the nonperformance-based portion of the E&T grant based on each State agency's average monthly caseload as a percentage of the average monthly caseload nationwide. As required under section 1753 of Public Law 101–624, the Department implemented, or phased in, the new allocation formula in Fiscal Year (FY) 1992. Under the phase in provisions of the law, the FY 1992 allocations were based on each State agency's work registrant and caseload populations with additional adjustments mitigating the losses of States which would receive allotments of less than $50,000. Funds were allocated solely on the work registrant population in FY 1993.

Many commenters support the formula specified under Public Law 101–624 because it distributes E&T funds on the basis of each State agency's proportion of the work registrant population served in the E&T program. Even so, some commenters suggested that the Department implement additional modifications to the formula. One commenter suggested that the formula take into consideration the number of work registrants who are exempted from participation (e.g., geographic or individual) under the State agency's approved E&T plan. Because a number of State agencies receive approval from the Department to exempt a significant portion of their work registrant population, the commenter stressed that this modification would further direct E&T funds to those States which have the greatest need for the funds, based on their proportion of work registrants. Another commenter recommended that the formula also include recipients who are exempt from work registration but who request to participate in the E&T program (i.e., exempt volunteers).

The Department agrees that a formula directing E&T funds towards actual participants may result in an equitable distribution of the funds. However, these suggestions are not being adopted. It is the Department's opinion that section 1753 of Public Law 101–624 specifically requires *all* work registrants to be included in the formula for allocating E&T funds and does not mention including volunteers in the calculation. In addition, counting volunteers in the formula is inequitable to State agencies that are serving only their work registrant population. Accordingly, the Department is not amending the proposed provisions at § 273.7(d)(1) to incorporate these suggestions.

The proposed language at § 273.7(d)(1)(i)(A) specified that, by using the work registrant data from the most recent Federal fiscal year, the E&T nonperformance-based grants would be allocated on the basis of the average monthly number of work registrants in each State as a percentage of the average monthly number of work registrants nationwide. Two commenters questioned how the Department would determine a monthly average when the FNS Form 583 requires a total count of work registrants in the month of October and new work registrants in the remaining eleven months. The commenters also noted that the preamble to the proposed rule did not discuss that a monthly average would be used. The preamble indicated that each State agency's percentage of work registrants from the most recent Federal fiscal year would be used.

The Department intended to specify, as discussed in the preamble to the proposed rule, that work registrant data reported in the most recent Federal fiscal year would be used to determine each State agency's percentage of work registrants. The Department agrees that the 583 database does not produce a monthly average because the same work registrant data is not reported in all twelve months of the fiscal year. Accordingly, the Department is amending the proposed provision at § 273.7(d)(1)(i)(A) to specify that, effective in FY 1992, the E&T grants shall be allocated on the basis of work registrants in each State agency as a percentage of work registrants nationwide.

When allocating the nonperformance-based E&T funds to the State agencies, the Department proposed to use work registrant information that is reported, on a quarterly basis, through FNS Form 583. The FNS Form 583 identifies the number of work registrants in the State as of October 31st, and all new work registrants that are certified in the remaining eleven months of the fiscal year. Even though the 583 database is the most reliable source of work registrant information, the Department acknowledged that certain reporting practices would result in some State agencies overreporting their work registrants numbers. To address this concern, the proposed rule included provisions which would require State agencies that universally work register or double count work registrants within a fiscal year to specify in their E&T plans their methodology for adjusting their work registrant figures.

The Department received many comments with respect to the use of the 583 database. Most expressed concern that the database is unreliable and, if used as the basis for allocating E&T funds, would result in an equitable distribution. Many commenters pointed to the wide variations in the percent of work registrant populations that existed in the 583 database used for the FY 1992 allocations as an example of problems with the 583 database. Because of these concerns, some commenters recommended that the Department delay the implementation of the new allocation formula until a reliable work registrant database exists. Others suggested that the Department take additional measures, such as validating the work registrant populations in State agencies that report substantial increases in their work registrant populations. One commenter also suggested that *aln* State agencies specify how work registrant information is collected and what measures are taken to adjust for overreporting or double counting within a fiscal year.

Given the provisions specified under section 1753 of Public Law 101–624, the Department does not have the option of delaying the implementation of the allocation formula or substituting another database that does not reflect work registrant information. However, the Department shares the commenters' concerns that the 583 database is valid and has taken numerous steps, in addition to the proposed provisions, to correct apparent discrepancies. Discrepancies that existed in the database used for the FY 1992 allocations were corrected and the State agencies were notified of the resulting adjustments to their allocations. FNS Regional Offices also conduct a Management Evaluation review of work registrant reporting systems if a State agency's reported percentage of work registrants compared to caseload is outside the range of 6 to 10 percent. The Department believes that these activities help ensure that reliable work registrant data is used.

The Department also concurs that all State agencies should identify their procedures for collecting work registrant data and ensuring that individuals are not counted as work registrants more than one time in each fiscal year. This will allow the Department to scrutinize each State agency's methodology and resolve any problems if it is determined that questions exist with the work registrant figures reported on the FNS Form 583. Accordingly, the Department is amending the proposal at § 273.7(c) in this final rule to specify that the E&T plan must describe the State agency's method for collecting and reporting accurate work registrant information.

Under the proposed rule, the Department specified that FNS reserves the right to adjust a State agency's figure if it is determined that the State agency's work registrant data is questionable or unacceptable. The State agency would have 30 days to submit revised figures that satisfy the Department's concern.

One commenter suggested that the State agency be provided with an opportunity to respond to the Department's concern before it takes place. Another commenter stated that the Department should define "questionable" and "unacceptable." One other commenter maintained that the procedures for correcting duplicate counts will delay notification to the State agencies of their E&T allocations.

It is the Department's intention that the State agency would be notified of the Department's proposed adjustment before it takes place so that it has an opportunity to respond to the Department's concern. This will expedite the resolution of contested work registrant data by allowing the State agency to respond to the Department's adjustment in its submittal of another methodology. With respect to suggested definitions, the Department does not believe a regulatory definition for "questionable" or "unacceptable" work registrant data is workable or appropriate. The Department will clearly inform the State agency of the reasons its work registrant data is considered questionable or unacceptable as the situation warrants. The Department is therefore adopting the proposed amendment at § 273.7(c)(4)(viii) in this final rule without change.

Expansion of E&T Programs—7 CFR 273.7(f)(1)

In accordance with section 1726 of Public Law 101–624, the Department proposed changes to 7 CFR 273.7(f)(1) to add two new activities to the list of potentially approvable E&T components. The first is any educational component that will improve a participant's literacy. The second is a component designed to improve the self-sufficiency of recipients through self-employment programs including programs that provide instruction for self-employment ventures.

All the comments received on this provision were in support of the Department's proposal. However, since the publication of the proposed rule, the Department published final regulations (56 FR 55052) on October 24, 1991 that amend 7 CFR 273.7(f)(1)(vi) to specify that a remedial education program designed to achieve a basic literacy level is an acceptable educational program. The Department is amending 7 CFR 273.7(f)(1) in this final action to specify that programs designed to improve the self-sufficiency of recipients through self-employment programs is a potentially acceptable E&T component.

Priority Volunteer Service—7 CFR 273.7(f)(5)

As specified under section 1726 of Public Law 101–624, the proposed rule contained a provision that would allow two State agencies, upon FNS approval, to give priority service to food stamp participants who volunteer to participate in E&T provided that the State agencies continue to meet nationally established performance standards. Once an application is approved, the State agency may provide service to volunteers (exempt and non-exempt) through September 30, 1995.

Several commenters objected to the Department's decision to limit the number of applications to two, when, as specified under Public Law 101–624, the authority exists to approve more. Some commenters maintained that the results from more than two voluntary programs would be necessary for the Department to adequately assess voluntary programs. One commenter further suggested that the Department publish a Notice in the **Federal Register** inviting State agencies to apply for approval to conduct voluntary E&T service if at least two applications are not received within the proposed 90-day period.

The Department does not intend to approve more than two applications at this time. It is the Department's opinion that two programs will be sufficient to examine the effect of volunteer service.

Accordingly, the final rule adopts the proposal at 7 CFR 273.7(f)(5), specifying that the Department will approve two acceptable applications for priority volunteer service. As previously discussed in the preamble to the proposed rule, the Department will review all applications received within 90 days after the publication of this final rule. If two approvable applications are not received within this time period, the Department will continue to accept and review applications until two applications are approved.

The preamble to the proposed rule discussed the current definition of exempt and non-exempt volunteers at 7 CFR 273.7(f)(4) of the regulations. A number of commenters stressed that this definition is too restrictive and would not allow the State agencies to effectively provide volunteer service when established performance standards must be met. Rather than apply the current definition of volunteer, several commenters suggested that the Department conform the definition of volunteer to that used by the Job Opportunities and Basic Skills (JOBS) program.

The JOBS program encompasses the work requirement for Aid to Families with Dependent Children (AFDC) recipients as specified under Title IV F of the Social Security Act (42 U.S.C. 681). As specified under 45 CFR 250.31 of the JOBS program regulations, a volunteer could be a recipient who is not exempt from work requirements but chooses to participate in the JOBS program prior to being assigned to a JOBS activity on a mandatory basis. Commenters stressed that this would allow the State agencies to serve a significant volunteer population while meeting required performance standards. Mandatory work registrants could volunteer to participate without first completing an E&T component on a mandatory basis.

The Department agrees that, to effectively provide priority service to volunteers while still meeting applicable performance standards, some deviation from current policy must be allowed. It was the Department's intention in the proposed rule to allow State agencies flexibility in defining their volunteer population for priority volunteer service. Accordingly, the final rule amends the proposal at § 273.7(f)(5)(i)(A) to clarify that the State agencies submitting an application for priority service to volunteers have the flexibility to define their volunteer population, with certain restrictions, as discussed below.

One commenter recommended that the regulations clarify that AFDC recipients who are exempt from work registration because they are subject to JOBS requirements could volunteer for priority volunteer service. One other commenter expressed support for the provision if it would allow the State agencies to leverage JOBS funding and count participation in both programs.

It is not the Department's position that JOBS participants may be considered E&T volunteers unless the JOBS participants are assigned to an E&T activity that is separate from the assignment under the JOBS program. For example, a JOBS participant assigned to an education component could volunteer for an E&T Job Club component. However, a JOBS participant assigned to an education component under the JOBS program could not be considered an E&T volunteer in the same education component that is operated through the E&T program. Counting the same activity in both programs would misrepresent program participation for both the JOBS and E&T programs.

As specified under current regulations at 7 CFR 273.7(f)(4)(ii), any food stamp recipient who is exempt from food stamp work registration may volunteer for the E&T program. Accordingly, the final rule does not amend the proposal at § 273.7(f)(5) and continues to allow a State agency discretion in defining its volunteer population.

The Department's proposed rule identified the required information a State agency's application must contain for it to be approvable. Very few comments were received on the proposed application requirements. However, two commenters objected to the requirement that, without an increase in funding, the State agency obtain an outside agency to provide an evaluation of its volunteer service.

As discussed in the preamble to the proposed rule, there is considerable debate surrounding the merits of a voluntary program over a mandatory program. Because the provisions of section 1726 of Public Law 101–624 represent the first major change from the mandatory nature of the E&T program, the Department believes it is important that the approved volunteer programs be evaluated by an objective organization outside of the State agency operating the program. Although no additional funds were provided under Public Law 101–624 for the implementation or operation of the priority volunteer service experiments, a State agency may, as stated in the preamble to the proposed rule, include the costs of the evaluation as part of its E&T program costs.

The Department intends to allow State agencies discretion in defining what aspects of volunteer service the evaluation will study. A State agency may design the evaluation to study its primary reason for providing priority service for volunteers. Other aspects of priority service to volunteers would not necessarily need to be included in the evaluation. For instance, the State agency may want to assess if voluntary participants, who are under no obligation to participate in the E&T program, benefit more from the completion of an E&T component over mandatory participants who may lose their benefits if they fail to comply with the E&T components. Such a benefit could be measured by test scores taken before and after a participant completes the component. The State agency may also want to assess the degree to which volunteers begin or complete component activities when compared to mandatory participants. These are examples of information that may be useful in assessing the potential benefits of providing priority volunteer service in the E&T program.

Accordingly, the proposed provisions at § 273.7(f)(5)(i) and § 273.7(f)(5)(ii) are adopted in this final rule with one additional change. The change in the final rules at § 273.7(f)(5)(i)(E) requires the State to identify a recommended research design in its application that will be used to evaluate priority volunteer service. This information will provide the Department with sufficient information when approving applications for priority service.

Due Date for Plan Submissions—7 CFR 273.7(c)(5)

The proposed rule included a provision that would allow the Department additional time to approve E&T plan submittals by requiring the State agencies to submit their E&T plans to the Department no later than 60 days prior to the applicable fiscal year. As specified under 7 CFR 273.7(c)(5) of the regulations, State agencies currently must submit their E&T plans 45 days (August 15) prior to the beginning of the fiscal year.

Some commenters supported the provision, provided the Department notifies the State agencies of their E&T allocations and other pertinent E&T plan instructions in sufficient time for the State agencies to meet the deadline. Other commenters objected to the proposal because the change would complicate program coordination and

may not provide sufficient time for the State agencies to submit their plans.

It has been common in the past for State agencies to miss the August 15 deadline. In such cases it is often difficult to conduct a thorough review, obtain necessary clarifications, and approve these plans prior to the beginning of the upcoming Federal fiscal year. The Department believes that the proposal would lessen the administrative and financial complexities that are created when plan approval are not finalized by the beginning of the Federal fiscal year. However, because of the objections to this proposal and the difficulties some commenters believed it would create, the Department is withdrawing its proposal to change the deadline for submitting E&T plans. This final rule does not amend current rules at 7 CFR 273.7(c)(5).

Transitional Child Care Expenses—7 CFR 273.10(d)(1)(i)

On October 13, 1988, Public Law 100-485, the Family Support Act of 1988, was enacted. Title II of the Act (42 U.S.C. 602) establishes the JOBS program. Title III of the Act, Supportive Services for Families, provides for Transitional Child Care (TCC), extended child care for eligible families which have ceased to receive AFDC as a result of the increased hours or increased income from employment. Title III of the Family Support Act also specifies that any money received as payment for child care or any reimbursement for costs incurred for child care shall not be treated as income for purposes of any other Federal or federally-assisted program that bases eligibility for, or the amount of benefits, upon need, such as the Food Stamp Program.

Under current food stamp policy, AFDC TCC payments are treated neither as income nor as a reimbursement. Households that pay child care providers directly and receive AFDC TCC payments may receive a dependent care deduction from income for the amount of the child care costs, up to the regular limit. In the more common situation where a household's child care expenses are paid directly to the child care provider, a deduction is not allowed because the household does not pay the expense. This uneven treatment is not consistent with other food stamp policy concerning reimbursement for expenses. In order to make the policy internally consistent, treat day care recipients more equitably, and conform Food Stamp policy with AFDC, the Department proposed at 7 CFR 273.10(d)(1)(i) to treat these funds as a reimbursement, which allows a deduction only for the portion of child care expenses not reimbursed by JOBS or TCC.

The Department received five comments on this proposal. Four commenters were State agencies; one was a public interest group. Two State agencies supported the provision. Commenters who opposed the provision believed that TCC should be treated in the same manner as the Low Income Home Energy Assistance Program (LIHEAP) payments. Households which receive LIHEAP are also entitled to receive a deduction for the standard utility allowance. The Department believes that these are not analogous payments. The special provisions that allow households to have their utility expenses reimbursed with LIHEAP and also to receive a standard utility allowance deduction are mandated by section 5(e) of the Food Stamp Act of 1977, as amended. There is no legislative provision that provides for both an income exemption for the TCC payments and for the payments not to be treated as a reimbursement. Accordingly, the Department is adopting 7 CFR 273.10(d)(1)(i) as proposed in this final rule.

Technical Amendments

E&T Plans

The rule proposed two technical changes regarding the submission of E&T plans. The first change concerned current regulations at 7 CFR 273.7(c)(4) which state that interim E&T State plans are due to the Department by March 1987. This provision reflects the initial plan requirements for the E&T program. The proposed rule would have removed this date as well as other outdated references to the initial start-up of the E&T program.

The second change concerned current regulations at 7 CFR 273.7(c)(5) which specify that plans shall be submitted "biannually" beginning with FY 1991. The Department intended that plans be submitted "biennially" (i.e., every two years) not "biannually" (i.e., twice a year). The proposed rule would correct this mistake. Also, the submission of plans on a biennial basis began prior to FY 1991. The proposed rule would also correct this technical error.

No comments were received on either of the proposed technical changes. Therefore, the proposed amendments contained in 7 CFR 273.7(c) (4) and (5) are adopted as final without change by this final action.

Plan of Operation Submission Requirements

Food Stamp Program regulations at 7 CFR 272.2(e) specify the submission requirements of the State Plan of Operations which includes the State E&T plan. The proposed rule would amend § 272.2(e) to specify that the E&T plan must be submitted in accordance with 7 CFR 273.7(c)(5). This conforming amendment does not propose to change the current submission requirements specified at 7 CFR 273.7(c)(5).

No comments were received on this proposed technical amendment. Therefore, the proposed amendment contained in 7 CFR 272.2(e) is adopted without change by this final action.

Technical Correction—7 CFR 273.7(g)

A final rule published on October 24, 1991 (56 FR 55052) inadvertently removed language at 7 CFR 273.7(g)(1)(i) that clarified that noncompliant household members who join other households as nonheads of household are to be ineligible for two months. This sanction provision is prescribed by the statute and was implemented by a final rule published on August 15, 1990 (55 FR 33275). This final rule corrects this technical error by replacing the language that was unintentionally removed.

Implementation

In accordance with section 1781 of Public Law 101-624, the provisions at § 273.7(d)(1)(i)(A) and (B) which specify that the non-performance portion of the Federal E&T grant be distributed on the basis of each States agency's proportion of food stamp work registrants were effective and implemented by the Department on October 1, 1991. The provision at § 273.7(c)(4)(viii) which identifies information that must be included in the State agency's E&T plan is effective and must be implemented by August 15, 1993, the date the E&T plan must be submitted to FNS. The provision at § 273.10(d)(1)(i) which pertains to the treatment of certain child care reimbursements is effective 30 days after publication and must be implemented the first of the month following 45 days after publication of this rule. All other provisions contained in this rule are effective and must be implemented retroactively to February 1, 1992, as specified under section 1781 of Public Law 101-624.

In a March 4, 1992 memorandum to the FNS Regional Offices, the State agencies were instructed to implement the provisions at § 273.1(d), related to the households' option to designate their head of household, retroactively to

February 1, 1992. In accordance with guidance provided in this memorandum, the State agencies are not required to conduct a case file review of certification actions made since February 1, 1992.

Variances resulting from implementation of the provision regarding transitional child care shall be excluded from error analysis for 90 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii).

List of Subjects

7 CFR part 272

Alaska, Civil rights, Food Stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

1. The authority citation for parts 272 and 273 continue to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(127) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(127) *Amendment No. 340.* (i) The provisions at § 273.7(d)(1)(i)(A) and § 273.7(d)(1)(i)(B) are effective retroactive to October 1, 1991.

(ii) The provision at § 273.7(c)(4)(viii) is effective and must be implemented by August 15, 1993, the date E&T plans must be submitted to FNS.

(iii) The provision at § 273.10(d)(1)(i) is effective January 19, 1993 and must be implemented by March 1, 1993.

(iv) The remaining provisions of Amendment No. 340 are effective and must be implemented retroactively to February 1, 1992.

(v) Any variances resulting from implementation of the provision at § 273.10(d)(1)(i) shall be excluded from error analysis for 90 days from the required implementation date in accordance with 7 CFR 273.12(d)(2)(vii).

3. In § 272.2, a new paragraph (e)(9) is added to read as follows:

§ 272.2 Plan of operation.

* * * * *

(e) *Submittal Requirements.* * * *

(9) The Employment and Training Plan shall be submitted as specified under § 273.7(c)(5).

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.1, paragraph (d)(1) and the first and fourth sentences of paragraph (d)(2) are revised to read as follows:

§ 273.1 Household concept.

* * * * *

(d) *Head of household.* (1) A State agency shall not use the head of household designation to impose special requirements on the household, such as requiring that the head of household, rather than another responsible member of the household, appear at the certification office to make application for benefits. When designating the head of household, the State agency shall allow the household to select an adult parent of children (of any age) living in the household, or an adult who has parental control over children (under 18 years of age) living in the household, as the head of household provided that all adult household members agree to the selection. The State agency shall permit such households to select their head at each certification action or whenever there is a change in household composition. The State agency shall provide written notice to all households at the time of application and as otherwise appropriate that specifies the household's right to select its head of household in accordance with this paragraph. The written notice shall identify which households have the option to select their head of household, the circumstances under which a household may change its designation of head of household, and how such changes must be reported to the State agency. If all adult household members do not agree to the selection or decline to select an adult parent as the head of household, the State agency may designate the head of household or permit the household to make another selection. In no event shall the household's failure to select an adult parent of children or an adult who has parental control over children as the head of household delay the certification or result in the denial of benefits of an otherwise eligible household. For households that do not consist of adult parents and children or adults who have parental control of children living in the household, the State agency shall designate the head of household or permit the household to do so.

(2) For purposes of failure to comply with § 273.7 and § 273.22 (to the extent that workfare programs operated under this paragraph are included as components of State agency E&T programs), the head of household shall be the principal wage earner unless the household has selected an adult parent of children as specified in § 273.1(d)(1). * * * No person of any age living with a parent or person fulfilling the role of a parent who is registered for work or exempt from work registration requirements because such parent or person fulfilling the role of a parent is subject to and participating in any work requirement under Title IV of the Social Security Act, or in receipt of unemployment compensation (or has registered for work as part of the application for or receipt of unemployment compensation), or is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours shall be considered the head of household unless the person is an adult parent of children as specified in § 273.1(d)(1) and the household elects to designate the adult parent as its head of household. * * *

* * * * *

5. In § 273.7:

a. The introductory text of paragraph (c)(4) is amended by removing the first two sentences and adding a new sentence in their place.

b. Paragraphs (c)(4)(viii) through (c)(4)(xii) are redesignated as paragraphs (c)(4)(ix) through (c)(4)(xiii), respectively, and a new paragraph (c)(4)(viii) is added.

c. Paragraph (c)(5) is amended by removing the first sentence and revising the second sentence.

d. Paragraph (d)(1)(i)(A) is revised.

e. Paragraphs (d)(1)(i)(B) through (d)(1)(i)(F) are redesignated as paragraphs (d)(1)(i)(C) through (d)(1)(i)(G) respectively and a new paragraph (d)(1)(i)(B) is added.

f. A new paragraph (f)(1)(vii) is added.

g. A new paragraph (f)(5) is added.

h. The fifth sentence in paragraph (g)(1)(i) is amended by adding the words, "as specified under § 273.1(d)(1) or (d)(2)" after the words "joins another household as head of the household".

i. The last sentence of paragraph (g)(1)(i) is amended by adding the words, "ineligible for two months and shall be" between the words, "be" and "considered".

j. Paragraph (n)(1)(vii) is redesignated as paragraph (n)(1)(viii), the last three

sentences of paragraph (n)(1)(vi) are redesignated as paragraph (n)(1)(vii) and the first sentence in newly redesignated paragraph (n)(1)(vii) is amended by adding the words, "as specified under § 273.1(d)(1) or (d)(2)" to the end of the sentence.

The additions and revisions read as follows:

§ 273.7 Work requirements.

* * * * *

(c) *State agency responsibilities.*

* * *

(4) In accordance with 7 CFR 272.2(e)(9), each State agency must prepare and submit an Employment and Training plan to its appropriate FNS Regional Office and to the FNS National Office. * * *

(viii) The method the State agency uses to report work registrant information and prevent work registrants from being reported twice within a Federal fiscal year on the quarterly FNS Form 583. This method must specify how work registrants are excluded if the State agency work register all food stamp applicants (i.e., universal work registration) when the applicants are exempt from work registration as specified under paragraph (b) of this section *or* if the State agency work registers nonexempt participants whenever a new application is submitted and the participants may have already been registered within the past twelve months as specified under paragraph (a) of this section. If the method the State agency uses is questionable or unacceptable, FNS reserves the right to adjust a State agency's work registrant count. FNS shall advise a State agency of how the adjusted figure was determined and shall allow the State agency 30 days to submit another method for consideration by FNS.

* * * * *

(5) Plans shall be submitted biennially, 45 days before the start of the fiscal year, beginning in FY 1990.

* * *

* * * * *

(d) Federal financial participation.—(1) *Employment and training grants.* (i)

* * *

(A) Except as otherwise provided in paragraph (d)(1)(i)(D) of this section, effective in FY 1992, the nonperformance based Federal funding for employment and training grants shall be allocated on the basis of work registrants in each State agency as a percentage of work registrants nationwide. FNS will use work registrant data from the most recent Federal fiscal year. In FY 1992, each State agency shall receive an increase or decrease that is one-half of the difference between:

(*1*) an amount that is based on the percent of each State agency's caseload in FY 1990 as compared to the average monthly caseload nationwide; and

(*2*) an amount that is based on the percent of each State agency's work registrant population in FY 1990 as compared to number of work registrants nationwide.

(B) Effective in FY 1992, no State agency shall receive less than $50,000 in nonperformance based Federal E&T funds. To ensure that no State agency receives less than $50,000 in FY 1992, each State agency that is allocated more than $50,000 and would receive an increase in its E&T grant shall have its grant reduced if necessary. The reduction shall be proportionate to the number of work registrants in each State receiving more than $50,000 and receiving an increase in its E&T grant as compared to the total number of work registrants in all the States receiving more than $50,000 coupled with increases in their E&T grants. To ensure that no State agency receives less than $50,000 as of FY 1993, each State agency that is allocated to receive more than $50,000 shall have its grant reduced, if necessary, proportionate to the number of work registrants in each State as compared to the total number of work registrants in all the State agencies receiving more than $50,000. The funds from the reduction shall be distributed to State agencies initially allocated to receive less than $50,000.

* * * * *

(f) *Employment and Training programs.* * * *

(1) *Components.* * * *

(vii) A program designed to improve the self-sufficiency of recipients through self-employment including programs that provide instruction for self-employment ventures.

* * * * *

(5) *Priority Service to Volunteers.* With prior approval from FNS, two State agencies may provide priority service to volunteers through September 30, 1995. State agencies that submit an application to provide priority service to volunteers have the flexibility to establish procedures that deviate from regulations specified under paragraph (f)(4) of this section.

(i) To be eligible for FNS approval, a State agency shall submit an application that:

(A) Describes the volunteer population it intends to serve (e.g., number served, volunteer definition, characteristics of the target group, percent of volunteer population that are mandatory work registrants under normal E&T requirements and percent that are exempt from work registration);

(B) Describes the component activities that will be offered to volunteer participants;

(C) Identifies where the volunteer program will operate (i.e., Statewide or selected counties);

(D) Specifies the duration of the volunteer program;

(E) Identifies the criteria and research design the State agency recommends to evaluate the effectiveness of the program;

(F) Provides assurances that applicants who are subject to work registration as specified under § 273.7 (a) and (b) are required to work register as a condition of eligibility;

(G) Provides assurances that the State agency will meet the established performance standards under § 273.7(o); and

(H) Provides assurances that the evaluation will be conducted by an organization separate from the administration of the State agency and that ongoing and final result of the evaluation will be provided to FNS.

(ii) State agencies which receive approval to provide priority volunteer service shall:

(A) Submit a revised E&T plan that incorporates the voluntary service provisions;

(B) Continue to report quarterly (i.e., Form FNS 583) as specified under paragraph (c)(6) of this section;

(C) Meet the performance standards as specified under § 273.7(o); and

(D) Submit data annually which show the number of volunteers who fail to complete an assigned E&T activity.

* * * * *

6. In § 273.10, paragraph (d)(1)(i) is amended by adding a new sentence at the end of the paragraph.

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* * * *

(1) *Disallowed expenses.* (i) * * * A child care expense which is reimbursed or paid for by the Job Opportunities and Basic Skills Training (JOBS) program under Title IV–F of the Social Security Act (42 U.S.C. 681) or the Transitional Child Care (TCC) program shall not be deductible.

* * * * *

Dated: December 11, 1992.

Phyllis R. Gault,

Acting Administrator.

[FR Doc. 92–30788 Filed 12–17–92; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1955, 1956, 1962 and 1965

Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Servicing and Liquidation of Chattel Security regulations to address servicing of bankruptcy cases and update references to forms in the Agency's regulations. These amendments will consist of conforming changes and cross references in several FmHA servicing regulations. The intended effect of this action is to add clarification in bankruptcy cases.

EFFECTIVE DATE: December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Edward Yaxley, Senior Loan Officer, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, U.S. Department of Agriculture, room 5435-South, Washington, DC 20250, Telephone (202) 720–6293.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management, making publication for comment unnecessary. These revisions clarify the following provisions. Section 1955.15(d)(6)(i) of subpart A of part 1955 of chapter XVIII of the Code of Federal Regulations is being revised to clarify that when a bankruptcy petition has been filed after an account has been accelerated FmHA foreclosure will be suspended until the requirements of the Bankruptcy Code have been met. There has been some confusion about whether FmHA's existing regulation intended to suspend all foreclosure activity including sales by a trustee in bankruptcy. FmHA has never intended to suspend the actions of other parties in its regulations, and is clarifying this regulation so that it includes FmHA foreclosures only.

Exhibit E–1 to FmHA Instruction 1955–A (available in any FmHA office) entitled "Notice of Acceleration of Farmer Program Loan Accounts Secured by Real Estate and/or Chattels in Cases Involving Discharged Chapter 11, 12 and 13 Bankruptcy Borrowers" is added to provide a notice of acceleration for discharged borrowers who default under their confirmed bankruptcy plans under chapter 11, 12 and 13 of this Bankruptcy Code. Exhibit E of FmHA Instruction 1955–A (available in any FmHA office) is an unpublished exhibit entitled "Notice of Acceleration of Farmer Program Loan Accounts Secured by Real Estate and/or Chattels in Cases Involving Bankruptcy" is being clarified to change its title to "Notice of Intent to Foreclose on the Security of Farmer Program Borrowers Discharged Under Chapter 7 of the Bankruptcy Code and Terminate Any Farmer Program Family Living and Farm Operating Expenses" and to state that FmHA will be foreclosing on its loan security and not attempting to collect the debt as an individual liability against a borrower who has been discharged in a chapter 7 bankruptcy. Exhibit F of FmHA Instruction 1955–A (available in any FmHA office) is an unpublished exhibit entitled "Notice Declaring FmHA Debt Immediately Due and Payable and Advising of the Availability of Debt Settlement." This exhibit is being clarified to remove the due and payable clause. The revision is consistent with existing FmHA regulations at [56 FR 10145–10150], March 11, 1991, which removed the due and payable requirement for farmer program debt settlements. The revisions also update several cross-references and add references to Exhibit E–1 described above which is being added to FmHA Instruction 1955–A: Exhibit A of subpart B of part 1956 of chapter XVIII of the Code of Federal Regulations is removed. This exhibit is strictly an internal management document to summarize the debt settlement case file to assist the approval officer in the review of the case. It was unintentionally published March 11, 1991 [56 FR 10147].

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V [48 FR 29115, June 24, 1983] and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency loans, Farm Operating Loans, and Farm Ownership Loans are excluded, with the exception of nonfarm enterprise activity, from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." 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, Public Law 91–190, an Environmental Impact Statement is not required.

List of Subjects

7 CFR Part 1955

Foreclosure, Government acquired property.

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—Agriculture, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.33 and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

2. Section 1955.15 is amended by revising the introductory text of paragraphs (d)(2) and (d)(6)(i) to read as follows:

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

* * * * *

(d) * * *

(2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section, the account will be accelerated using a notice substantially similar to Exhibits B, C, D, E, or E–1 of this subpart (available in any FmHA office), as appropriate, to be signed by the official who approved the foreclosure. The accounts of borrowers with pending Chapter 12 and 13 cases which have not been discharged will be accelerated in accordance with instructions from OGC. Upon OGC approval, accounts of these borrowers may be accelerated using a notice substantially similar to Exhibit D of this subpart. Loans secured by chattels must be accelerated at the same time as loans secured by real estate in accordance with § 1965.26 (c) of subpart A of part 1965 of this chapter. The notice will be sent by certified mail, return receipt requested, to each obligor individually, addressed to the last known address. If different from the property address and/or the address the Finance Office uses, a copy of the notice will also be mailed to the property address and the address currently used by the Finance Office. (In chattel liquidation cases which have been referred for civil action under subpart A of part 1962 of this chapter, the Finance Office will be sent a copy of Exhibits D, E, or E–1 (available in any FmHA office) as applicable. County Office and Finance Office loan records will be adjusted to mature the entire debt in such cases). If a signed receipt for at least one of these acceleration notices sent by certified mail is received, no further notice is required. If no receipt is received, a copy of the acceleration notice will be sent by regular mail to each address to which the certified notices were sent. This type mailing will be documented in the file. A State Supplement may be issued if OGC advises different or additional language or format is required to comply with State laws or if notice and mailing instructions are different from that outlined in this paragraph. A conformed copy of the acceleration notice will be forwarded to the servicing official. Farmer Program appeals will be concluded before acceleration. For MFH loans, a copy of the acceleration letter will also be forwarded to the National Office, ATTN: MFH Servicing and Property Management Division, for monitoring purposes. Accounts may be accelerated as follows:

* * * * *

(6) * * *

(i) When bankruptcy is filed after an account has been accelerated, any foreclosure action initiated by FmHA must be suspended until:

* * * * *

PART 1956—DEBT SETTLEMENT

3. The authority citation for part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Debt Settlement—Farmer Programs and Housing

4. Exhibit A of Subpart B is removed.

PART 1962—PERSONAL PROPERTY

5. The authority citation for part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

6. Section 1962.17(a)(1) is revised to read as follows:

§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.

(a) * * *

(1) The borrower must account for all security and will be instructed of this requirement by the County Supervisor when a loan is made and as often afterward as necessary. When the borrower sells security, the property and proceeds remain subject to the lien until the lien is released by the County Supervisor. Purchasers of security who inquire should be informed that the property is subject to FmHA's lien and will remain subject to it until they deliver any proceeds in cash to the County Supervisor or make checks payable jointly to the borrower and FmHA and the check has cleared. When the borrower fails to account properly for security, the County Supervisor will take the actions required in § 1962.18 of this subpart. Releases of sales proceeds will automatically be terminated when Exhibits D, E, or E–1 to subpart A of part 1955 of this chapter is sent to the borrower. Termination of such release will not occur prior to that time.

* * * * *

§ 1962.40 [Amended]

7. Section 1962.40 is amended by adding in the fourth sentence of the introductory text of paragraph (b)(2) the words ", or 9–A and 10–A, as appropriate," after the words "Attachments 9 and 10"; by revising in the fifth sentence of the introductory text of paragraph (b)(2) the words "attachments 4, 6 or 10" to read "Attachments 4, 6, 6–A, 10 or 10–A "; and by revising in paragraphs (b)(2)(i) and (b)(2)(ii) the words "Exhibits D or E" to read "Exhibits D, E, or E–1".

8. Section 1962.41(c) is revised to read as follows:

§ 1962.41 Sale of chattel security or EO property by borrowers.

* * * * *

(c) *Government takes possession.* The borrower may also turn over possession of the chattels to FmHA by signing Form FmHA 455–4, "Agreement for Voluntary Liquidation of Chattel Security." This form authorizes FmHA to sell the security at either public or private sale. If FmHA hires a caretaker, services should be obtained by use of Form AD–838, "Purchase Order."

* * * * *

§ 1962.49 [Amended]

9. Section 1962.49 is amended in paragraph (c)(2) by revising the words "Exhibit D or Exhibit E" to read "Exhibits D, E, or E–1" and by removing in paragraph (c)(3)(ii)(A) the words "or Form FmHA 451–25, 'Status of Account,' ".

PART 1965—REAL PROPERTY

10. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases.

11. Section 1965.34 is amended by revising paragraph (e) to read as follows:

§ 1965.34 Non-Program (NP) loans.

* * * * *

(e) *Default.* When an NP debtor is in default of the loan and/or security instruments and the default cannot be corrected in a reasonable period of time (usually less than 1 year) the account will be accelerated by the use of Exhibits D, E, or E–1 of subpart A of part 1955 (available in any FmHA office), as applicable. The statement regarding deferrals in Exhibit D will be deleted. If the debtor has not cured the default within the time provided in the acceleration notice, FmHA will proceed with the foreclosure without further notice or any extension of time.

* * * * *

Dated: October 2, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–30679 Filed 12–17–92; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 91-128-3]

Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; withdrawal.

SUMMARY: On December 18, 1981, we published in the **Federal Register** (46 FR 61641, Docket No. 81-099) a document suspending the effective date of that part of a final rule published in the **Federal Register** on November 20, 1981 (46 FR 57026-57027), that increased the maximum Federal indemnity which could be paid for breeding swine destroyed because of brucellosis. This document withdraws that part of the final rule of November 20, 1981.

EFFECTIVE DATE: Effective December 18, 1992. The amendment to the second sentence of § 51.3(b) (1), (2), and (3), that was published at 46 FR 57027, November 20, 1981, and suspended at 46 FR 61641, December 18, 1981, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Dr. Delorias M. Lenard, Senior Staff Veterinarian, Swine Health Staff, VS, APHIS, USDA, room 736-A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7767.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious infectious disease of animals and man caused by bacteria of the genus Brucella. Brucellosis in swine is characterized by abortion, infertility, orchitis, posterior paralysis, and lameness. The regulations is 9 CFR part 512 provide for payment of Federal indemnity to owners of animals destroyed because of brucellosis.

On November 20, 1981 (46 FR 57026-57027), we published in the **Federal Register** a final rule that amended that the regulations in § 51.3(b)(1), (b)(2), and (b)(3) by, among other things, increasing the maximum Federal indemnity that could be paid for breeding swine destroyed because of brucellosis. On December 18, 1981, we published in the **Federal Register** (46 FR 61641, Docket No. 81-099) a document suspending the effective date of only that part of the final rule. The suspension was necessary because there were no funds available at the time to pay increased Federal indemnity for breeding swine destroyed because of brucellosis.

In a final rule published and effective on November 2, 1992 (57 FR 49375-49376, Docket No. 91-128-2), we amended the regulations in § 51.3(b)(2) and (b)(3) to increase the amount of Federal indemnity for breeding swine destroyed because of exposure to brucellosis. The proposed rule was published in the Federal Register on July 1, 1991 (57 FR 29225-29226, Docket No. 91-128). As explained in the proposed rule, this increase was based on a reevaluation of the brucellosis eradication program and a determination that funds were available to pay a higher level of indemnity for those exposed breeding swine. The final rule did not increase the amount of indemnity that could be paid for breeding swine destroyed as brucellosis reactors, so that owners of breeding swine would have a financial incentive to destroy brucellosis exposed swine in a timely manner, reducing the risk of the disease spreading.

It was our intention for the final rule of November 2, 1992, to supersede the suspended part of the final rule published in November 20, 1981. However, we did not include specific instructions to that effect in the November 2, 1992, final rule. This document corrects that oversight.

Accordingly, we are withdrawing the amendment to § 51.3(b), the second sentences in paragraphs (b)(1), (2), and (3), that was published in the **Federal Register** on November 20, 1981 (46 FR 57027) and suspended at 46 FR 61641, December 18, 1981.

Authority: 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, and 134b.

Done in Washington, DC, this 15th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30769 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 162

[Docket No. 91-027-4]

Accreditation of Veterinarians

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: In a final rule published in the **Federal Register** and effective on November 23, 1992 (57 FR 54906-54916, Docket No. 91-027-3), we amended our regulations in 9 CFR part 162 to accredit veterinarians and authorize them to perform, on behalf of the Animal and Plant Health Inspection Service, certain animal health activities. We also revised procedures for suspending and revoking accredited veterinarian status, and added language describing how civil and criminal penalties may be imposed on accredited veterinarians who violate regulatory requirements.

In response to a comment on the preceding proposed rule published on June 4, 1992 (57 FR 23540-23548, Docket No. 91-027), our final rule stated in the preamble that we were removing a sentence in proposed § 162.12(d) that read: "Issuance of three or more letters of dismissal within a 5-year period citing incidents of minor violations by an accredited veterinarian may be cause for more severe action under this section and § 161.4." We inadvertently left this sentence in the regulatory text. We are correcting this error in the regulatory text of the final rule.

FOR FURTHER INFORMATION CONTACT: Dr. J.A. Heamon, Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, room 700, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6954.

Correction

In FR Doc. 92-28318, page 54915, in § 162.12, third column, paragraph (d) is corrected by removing the last sentence.

Done in Washington, DC, this 15th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30770 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 206

[Regulation F; Docket No. R-0769]

Interbank Liabilities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing in final a new Regulation F, Interbank Liabilities. The final rule implements section 308 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which requires the Board to prescribe standards to limit the risks posed by exposure of insured depository institutions to other depository institutions. The final rule applies to banks, savings associations,

and branches of foreign banks with deposits insured by the Federal Deposit Insurance Corporation (FDIC).

The final rule generally requires insured banks, savings associations, and branches of foreign banks, referred to collectively as "banks," to develop and implement internal prudential policies and procedures to evaluate and control exposure to the depository institutions with which they do business, referred to as "correspondents."

The rule also establishes a general "limit" stated in terms of the exposed bank's capital, for overnight "credit exposure" to an individual correspondent, as defined by the rule. Under the rule, a bank ordinarily should limit its credit exposure to an individual correspondent to an amount equal to not more than 25 percent of the exposed bank's total capital, unless the bank can demonstrate that its correspondent is at least "adequately capitalized." No limit is specified by the rule for credit exposure to correspondents that are at least "adequately capitalized," but a bank is required to establish and follow its own internal policies and procedures with regard to exposure to all correspondents, regardless of capital level.

The final rule provides for a thirty-month transition period after the effective date for full implementation of the rule. Banks must have in place the internal policies and procedures required by the rule on June 19, 1993. The regulatory limit on credit exposure to correspondents that a bank cannot demonstrate are at least "adequately capitalized" will be phased in, with the limit set at 50 percent of the exposed bank's capital for a one-year period beginning on June 19, 1994, and reduced to 25 percent as of June 19, 1995.

EFFECTIVE DATE: December 19, 1992.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452-3625), Lawranne Stewart, Attorney (202/452-3513), or Manley Williams-Stander, Legal Assistant (202/452-5565), Legal Division; or Stephen Lovette, Manager (202/452-3622), or Derek L. Young, Supervisory Financial Analyst (202/452-2960), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On July 20, 1992, the Board published for comment a proposed Regulation F, Interbank Liabilities, to implement section 308 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). 57 FR 31974, July 20, 1992. Section 308, which added a new section 23 to the Federal Reserve Act (FRA), requires the Board to prescribe standards, by regulation or order, that will have the effect of limiting the risks posed by an insured depository institution's exposure to another depository institution.

Summary of the Proposed Rule

The Board's proposed rule was designed to ensure that banks adopt prudent limits on credit and liquidity risks in dealing with other depository institutions. The proposed rule required banks to establish limits on both credit and settlement exposure to each individual correspondent. The proposed rule also established "benchmark" guidelines on the overnight credit exposure to individual correspondents that ordinarily should not be exceeded. The benchmark guidelines were stated as percentages of the exposed bank's capital. The levels of overnight credit exposure considered to be permissible under the benchmarks were tiered based on the capital of the correspondent with which the bank is dealing, so that higher levels of a bank's capital may be exposed to better capitalized correspondents. The benchmark guidelines under the proposed rule were intended to establish the maximum credit exposure that ordinarily would be considered to be prudent with respect to a correspondent with a particular level of capital.

The benchmark guidelines, which were based on a measure of credit exposure that excluded certain relatively low-risk transactions, generally permitted a bank to have credit exposure to an individual correspondent in an amount up to 25 percent of the exposed bank's total capital. For a correspondent that a bank could demonstrate is "adequately capitalized," the bank could have credit exposure under the proposed rule equal to 50 percent of the bank's total capital, but no more than 25 percent of the bank's capital could be exposed through transactions with a term to maturity of more than thirty days. No specific benchmark guideline was provided under the proposed rule for credit exposure to a correspondent that the bank could demonstrate was "well capitalized."

Summary of Final Rule

The final rule continues to require that a bank adopt internal policies and procedures to address exposure to correspondents, and includes a "regulatory limit" for exposure to correspondents that are less than adequately capitalized. As with the proposed rule, "correspondent" includes both domestically chartered depository institutions that are federally insured and foreign banks. The Board has made several significant modifications to the proposed rule, however, in order to improve the effectiveness of the rule and to reduce burdens identified by the comments.

Prudential Standards

The final rule provides greater detail concerning the prudential standards in order to clarify the rule's requirements for internal policies and procedures to identify and control risk. Under the final rule, a bank is required to adopt internal policies and procedures to address the risk arising from exposure to a correspondent, taking into account the financial condition of the correspondent and the size, form, and maturity of the exposure. The final rule allows banks to adopt flexible policies and procedures to meet this requirement in order to permit banks to allocate resources in a manner that will result in real reductions in risk, while minimizing the burden of compliance with the rule.

The final rule requires a bank to maintain written policies and procedures to prevent excessive exposure to any individual correspondent in relation to the financial condition of the correspondent. Under the final rule, a bank's board of directors must review annually the bank's policies and procedures concerning correspondents, but need not approve individual correspondent relationships. The policies and procedures adopted by the board must provide for consideration of credit and liquidity risks, including operational risks, in establishing and maintaining relationships with correspondents. Where a bank's exposure to a correspondent is significant, considering the size and maturity of the exposure and the condition of the correspondent, the bank must periodically review the financial condition of the correspondent. The final rule does not require periodic review of the financial condition of all correspondents. For example, the final rule does not require periodic review of the financial condition of a correspondent to which the bank has only insignificant levels of exposure, such as small balances maintained for clearing purposes.

The final rule requires that a bank take into account any deterioration in

the condition of a correspondent in evaluating the creditworthiness of the correspondent, and lists other factors that have a bearing on the financial condition of the correspondent. A bank may base its review of the financial condition of a correspondent on publicly available information, such as call reports, Thrift Financial Reports, Uniform Bank Performance Reports, or annual reports.[1] The final rule generally does not require a bank to obtain non-public information on which to base its analysis of the financial condition of a correspondent.[2]

The final rule provides that a bank may rely on another party, such as its bank holding company, a bank rating agency, or another correspondent, to provide financial analysis of a correspondent, as long as the bank has reviewed the assessment criteria used by that party. Additionally, a bank may rely on its bank holding company to select and monitor correspondents, or on a correspondent, such as a bankers' bank, to choose other correspondents with which to place the bank's federal funds, as long as the bank has reviewed and approved the selection criteria used.

The final rule requires that a bank establish internal limits on exposure only where the financial condition of the correspondent and the form or maturity of the exposure create a significant risk that payments will not be made as contemplated. Limits must be consistent with the risk undertaken, but may be flexible, based on factors such as the level of monitoring of the exposure and the condition of the correspondent. The final rule also provides that a bank need not set one overall limit on exposure to a correspondent, but may instead set separate limits for different forms of exposure, products, or maturities.

The final rule provides that, for the significant sources of exposure for which internal limits are required, the bank either should monitor its exposure or structure transactions with the correspondent in order to ensure that the exposure ordinarily remains within the internal limits established by the bank.[3] Where monitoring is used, the final rule indicates that the appropriate level of monitoring will depend on the type and volatility of the exposure, on the extent to which the exposure approaches the bank's internal limits, and on the condition of the correspondent. The final rule also indicates that *ex post* monitoring generally is sufficient.

Although the purpose of requiring monitoring or structuring of transactions to which limits apply is to ensure that exposure generally remains within established limits, the final rule recognizes that occasional excesses over limits may result from factors such as unusual market disturbances, unusual favorable market moves, or other unusual increases in activity or operational problems. The final rule requires the bank to establish appropriate procedures to address excesses over internal limits.

The final rule continues to require that a bank's internal policies and procedures address intraday exposure. As with other exposure of longer maturities, however, the final rule does not necessarily require that limits be established on intraday exposure. Such limits would be required only if the size of the intraday exposure and the condition of the correspondent indicated that there is a significant risk that payments will not be made as contemplated.

Limit on Credit Exposure to Certain Correspondents

The final rule provides that a bank's internal policies and procedures should limit overnight credit exposure to a correspondent to 25 percent of the exposed bank's capital, unless the bank can demonstrate that its correspondent is at least "adequately capitalized," as defined by the rule. The final rule does not specify limits for credit exposure to adequately or well-capitalized correspondents.[4]

The benchmark guideline included in the proposed rule for exposure to adequately capitalized correspondents served largely as a transition from the unrestricted exposure permitted for well-capitalized correspondents to the 25 percent benchmark for correspondents that are less than adequately capitalized. The final rule requires banks to take into account the maturity of exposure and changes in the financial condition of the correspondent in establishing internal prudential limits and monitoring, and therefore decreases the need for formal limits on credit exposure to adequately capitalized correspondents. Additionally, because existing exposure above the 25 percent limit for credit exposure to a less than adequately capitalized correspondent is not "grandfathered" under the rule if the correspondent slips below adequately capitalized, the existence of this limit will encourage banks to shorten the maturity of exposure to correspondents that are at risk of dropping below the capital levels required to be adequately capitalized.

This regulatory "limit" requires that a bank's internal policies and procedures limit "credit exposure" to a correspondent to 25 percent or less of the exposed bank's capital, unless the bank can demonstrate that the correspondent is at least "adequately capitalized," as defined in the rule. As in the proposed rule, this limit should be viewed as a maximum level for credit exposure, rather than as a safe harbor. Formal limits on credit exposure to such a correspondent would not be necessary where the banks' policies and procedures effectively limit credit exposure to an amount below the 25 percent limit, such as where only small balances are maintained with the correspondent, or where the correspondent has only been approved for a limited relationship. Although in many cases it will be necessary for a bank to establish formal internal limits to meet the regulatory limit, the provisions of § 206.3 of the final rule concerning excesses over internal limits also apply to limits established for the purpose of controlling "credit exposure" under § 206.4 of this rule.

As in the proposed rule, the "credit exposure" that is limited under the final rule is based on the assets and off-balance sheet transactions against which the bank must maintain capital under the risk-based capital guidelines, with the same exclusions of lower-risk

[1] For significant correspondent banking relationships, the Board believes that banks generally have considerable non-public information concerning their correspondents, such as information on the quality of management, general portfolio composition, and similar information. The limitation of the rule to financial analysis based on publicly available information is intended to recognize that access to non-public information is not always available, and is not intended to discourage the use of more extensive information, where available.

[2] A bank is required to obtain non-public information to evaluate a correspondent's condition only for those foreign banks for which no public financial statements are available. In these limited circumstances, the bank would need to obtain financial information directly from the correspondent.

[3] A bank could meet the requirements of the rule by monitoring actual overall exposure, or by establishing individual lines for significant sources of exposure, such as federal funds sales, and establishing procedures to ensure that exposure generally remained within the established lines. A bank could also maintain limits on exposure by establishing limits monitored by a correspondent, such as for sales of federal funds through the correspondent as agent.

[4] While the proposed rule referred to "benchmark guidelines" to reflect that the numerical limits were subject to exceptions, the successor provision in final rule refers to "limits" to reflect that this "limit" is an outside limit on the bank's own internal limits. This limit, as well as the bank's internal limits, are subject to exceptions noted in the final rule. Thus, the nature of this limit is substantially the same as the benchmark guidelines in the proposed rule.

transactions permitted. The final rule clarifies that "credit exposure" does not include settlement exposure, transactions in which the bank acts as agent, and other forms of exposure that are not covered by the capital adequacy guidelines.

Transition Provisions

To mitigate the need for a bank to reduce exposure rapidly to a correspondent whose capital has slipped below the levels needed to be considered adequately capitalized, the final rule increases the transition period for application of the 25 percent limit on credit exposure to 120 days. The longer transition period will avoid undue disruptions in correspondent relationships due to temporary declines in capital ratios by allowing the correspondent an opportunity to bring its capital ratios back above the relevant levels before the end of the next quarterly report. The extended period will also provide the exposed bank more time to implement any monitoring required to demonstrate compliance with the limit on credit exposure and to adjust the maturities or level of its exposure to the correspondent.

Initial Implementation Period

The proposed rule required that banks have internal policies and procedures in place by December 19, 1992, with the benchmark guidelines to be phased in over a two-year period. The final rule provides a transition period of six months before the prudential standards become effective, with the remaining limit on credit exposure phased in over a two-year period after that date. The longer initial implementation period will enable banks that have not made credit assessments of their correspondents to do so, and will provide an opportunity for banks to review and, where appropriate, improve their monitoring procedures.

Additional modifications to the proposed rule are detailed in the discussion below.

Summary of Comments

The Board received 321 comment letters on the proposed rule. Two hundred fourteen commenters opposed the rule. Five commenters supported the regulation's implementation of section 308. An additional seventeen commenters offered qualified support for the rule, urging the Board to modify implementation to make it less burdensome, by, for example, eliminating the guidelines based on capital. The others expressed no opinion or offered detailed comments. The comments included seventy-three "form letters," forty-one of which focused on the effect of the proposed rule on bankers' banks and sixty-one of which addressed the competition between Federal Reserve Banks and private sector correspondents. All of the form letters were from small banks.[5] The 321 commenters by category included 233 commercial banks, 41 bank holding companies, 16 bankers' banks, 13 trade associations, 5 clearinghouses, 6 savings associations, 1 Federal Home Loan Bank, and 6 others.

General Comments

Cost. One hundred fifty-one commenters expressed concern over the additional cost burden the proposed rule would impose. The Board has attempted to minimize costs to banks of implementing the final rule, but some costs are inherent in any new rule that results in changes in bank practices.

Excessive regulation. One hundred sixty-six commenters believed the proposed rule created excessive regulation. While the Board recognizes the regulatory burden associated with the new rule, the Board believes that the provisions of the final rule are necessary to carry out the intent of section 308.

Federal Reserve Bank and Federal Home Loan Bank competition. One hundred seventy-nine commenters expressed concern that the proposed rule would divert business from the private sector to the Federal Reserve Banks and Federal Home Loan Banks. Two commenters suggested that the Board reduce the competitive impact by including Federal Reserve Banks in the definition of correspondent. Another commenter suggested the Board require banks to conduct the same analysis of Federal Reserve Banks that would be required for a private correspondent. Because exposure to a Federal Reserve Bank or Federal Home Loan Bank poses minimal risk to a respondent, the Board does not believe that Federal Reserve Banks and Federal Home Loan Banks should be included in the definition of correspondent in the final rule. To treat Federal Reserve Banks and Federal Home Loan Banks as correspondents under the final rule would impose unnecessary costs and burdens on banks, with no appreciable reduction in risk.

Five commenters proposed that the Board rectify the competitive effect of the rule by changing the private-sector adjustment factor or the prices charged for check collection.[6] The Board will review the calculation of the private-sector adjustment factor to determine if modifications are appropriate.

Disruption of the federal funds market. Twenty-four commenters expressed concern that the proposed rule would disrupt the federal funds market by preventing banks from selling all of their federal funds to a single correspondent, and stated that the need to diversify federal funds sales among a number of purchasers could result in higher transaction costs. In addition, commenters expressed concern that the need to evaluate the financial condition of correspondents could lead banks that are members of the Federal Home Loan Banks to deposit funds in those banks rather than selling them to correspondents.

While the Board recognizes that there may be some initial restructuring of the channels for federal funds sales, the Board does not believe that the regulation will result in a material or lasting disruption of the federal funds market or to a material reduction in the availability of federal funds. The federal funds market is competitive, and the Board believes that creditworthy correspondents that are buyers of federal funds will continue to be able to fund profitable business utilizing this market. The Board also believes that modifications incorporated in the final rule, including elimination of the regulatory limit on credit exposure to adequately capitalized correspondents, will reduce the effect of the rule on the federal funds market.

Availability of credit. Fifty-six commenters asserted that the proposed rule would exacerbate the "credit crunch," generally either because of disruption in the federal funds markets or because of diversion of funds to Federal Reserve Banks or Federal Home Loan Banks. Twenty-two of these commenters claimed that this effect would be particularly pronounced in small communities. As discussed above, the Board believes that the modifications incorporated in the final rule have significantly reduced the

[5] For example: 30 commercial banks and bank holding companies sent identical letters which focused on competition from Federal Reserve Banks; 19 bankers' banks and their customers sent an identical resolution on the effect of the proposed rule on bankers' banks and competition from Federal Reserve Banks; 10 commercial banks, customers and shareholders of a bankers' bank, sent identical letters concerning the proposal's effect on bankers' banks; and 9 commercial banks sent substantially similar letters on bankers' banks and Reserve Bank competition.

[6] Two commenters noted that, in addition to the cost of maintaining capital, correspondents generally would have to bear the cost of disseminating call reports in order to provide their respondents with information on their capital ratios, and that Reserve Banks would not have to bear this cost.

likelihood of any reduction in the availability of funds for lending.

Effect on the FDIC funds. Thirty-eight commenters, nine of whom submitted a substantially similar letter, expressed concern that the proposed rule would weaken the Federal Deposit Insurance funds. Another commenter, however, asserted that the proposed rule would actually strengthen the funds. To the degree that the proposed rule diverts deposits, generally in the form of compensating balances, from depository institutions to Federal Reserve Banks or Federal Home Loan Banks, it may reduce FDIC insurance assessments. However, the Board believes that the overall effect of the final rule will be to strengthen the funds by reducing losses.

Repeal. Forty-six commenters urged the repeal of the statute and one commenter asserted that similar limits at the state level have failed. The power to repeal the statute, however, rests with the Congress rather than the Board.

Miscellaneous. Thirteen commenters suggested that, as an alternative to regulating respondents, the federal regulators supervise the correspondent banking business by restricting which banks could engage in such business, notifying respondents that do business with unsound correspondents, setting limits on the amount of exposure a correspondent can accept, or automatically transferring balances from weak correspondents to strong ones and notifying respondents later. Seven other commenters noted that it is inefficient for a thousand banks to monitor the same correspondent, which is also being monitored by a regulator. The Board does not believe that it would be appropriate to endorse specific correspondents, as such a practice could perpetuate the "too big to fail" concept that section 308 was designed to address.

One commenter urged the Board to create a new instrument for Treasury obligations for which the Federal Reserve Banks would be the broker and administrator. The Board does not believe that the creation of such an instrument is necessary, as the government securities market is broad and deep, offering many opportunities for investment. Another commenter suggested that the Board permit banks to sell federal funds to Federal Reserve Banks. The Board does not believe that such a practice would be appropriate because it would interfere with the conduct of monetary policy.

Another commenter suggested that the Board change Regulation D and the FDIC insurance calculation to encourage fee payment. The final rule increases the incentives for respondents to compensate correspondents by fees, and the Board believes that the market will make appropriate adjustments to this change.

One commenter suggested that the Board expand legal lending limits to include off-balance sheet items. The Board does not have the authority to effect such a change, however, as these limits are administered by the Comptroller of the Currency under the National Bank Act and by state banking regulators under state law.

One commenter urged the Board to tailor the rule to the strength of the respondent on the assumption that well-capitalized respondents would be managed wisely. The final rule places greater emphasis on a bank's internal policies and procedures.

Section-by-Section Comments

The section and paragraph numbers in the headings refer to the numbering of the proposed rule. Where a provision has been renumbered or moved, the appropriate cite in the final rule is provided in brackets.

Section 206.2 Definitions

Section 206.2(a) Bank

The proposed rule defined "bank" as an insured depository institution as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813). Banks covered by this definition must control their exposure to correspondents under this rule. The Board received twenty-seven comments on this section.

Exclusion of Small Banks

Fourteen commenters proposed that the Board exclude small or community banks, defined by some commenters as banks with assets under $1 billion, or hold such banks to a more lenient standard, especially in their correspondents are well or adequately capitalized. Another thirteen commenters, nine of whom submitted a substantially similar letter, asserted that the current rule violated Congressional intent, as Congress did not intend to harm small banks with this regulation.

Section 308 states that the Board should address the risk posed to an insured depository institution by the failure of another depository institution. It does not restrict that mandate to risks posed to large institutions. Section 308 is designed to limit bank failures attributable to losses due to the failure of a correspondent. An exemption for small bank exposure to correspondents would be contrary to this design, as the failure of a correspondent would continue to precipitate the failure of small banks.

Coverage of Definition

One commenter urged that the Board clarify that a nonbank credit card company is excluded from the definition of "bank."

Nonbank credit card companies are not considered to be banks for the purposes of this rule. However, bank users of credit card or other payment services may, depending upon the terms of their services, incur exposure to other banks by virtue of use of such services.

The definition in the final rule has been redrafted for clarity.

Section 206.2(b) Correspondent [Final Rule—Section 206.2(c)]

The proposed rule defined "correspondent" as a U.S. depository institution or a foreign bank, as defined in the proposed rule, to which a bank had exposure. The Board received 134 comments on this section.

Exclusion of Bankers' Banks

One hundred twenty-two commenters urged exclusion of bankers' banks from the definition of correspondent. Forty-seven commenters, twenty-six of whom submitted substantially similar letters, argued that bankers' banks pose no systemic risk, either because the bankers' banks are themselves small, or because they serve only small banks. Thirteen commenters, nine of whom submitted a substantially similar letter, asserted that bankers' banks reduce systemic risk by providing alternative correspondent services. Twenty-seven commenters, eighteen of whom submitted a substantially similar letter, argued that a bankers' bank may be less risky because it is a local institution, it is chartered to serve only banks, and its board includes officers of its respondent banks, who are therefore in a position to monitor its financial condition more closely.

Forty-six commenters, twenty-nine of whom submitted a substantially similar letter, pointed out that bankers' banks rely exclusively on interbank liabilities and are thus uniquely vulnerable to the interbank liability limits. Sixty-three commenters, including twenty-eight form letters and a number of bankers' banks, argued that Congress did not intend bankers' banks to be targeted. Many of these commenters concluded that the rule should create special provisions for bankers' banks. Thirty-two commenters, nine of whom submitted a substantially similar letter, argued that Congress recognized the unique role of bankers' banks in the Depository Institutions Deregulation and Monetary Control Act of 1980. One commenter argued that it was unfair to

subject bankers' banks to the rule when central liquidity facilities, which provide services to credit unions, are not covered. Another commenter argued that bankers' banks are not commercial banks and that the deserve the same treatment as Federal Reserve Banks. Eleven commenters argued that bankers' banks should be excluded from the scope of the rule because banks would otherwise be forced to obtain correspondent services from their competitors.

In contrast, two commenters argued that exclusion of bankers' banks would unfairly restructure the market for correspondent services, and another commenter noted that exemptions for some providers of correspondent services would erode competition.

The Board recognizes that bankers' banks are providing important services to respondents and are meeting a market need, and that Congress has given special status to bankers' banks in other statutes. Nonetheless, the Board does not believe that other legislation or the statutory language or legislative history of section 308 demonstrate a Congressional intent to exclude bankers' banks from the coverage of section 308. Nor does the Board believe the Congress intended for bankers' banks to be targeted by the rule. Accordingly, the final rule treats bankers' banks no differently than other correspondents.

The Board does not believe that bankers' banks will be unduly harmed by being treated as correspondents under the rule. Bankers' banks generally are at least adequately capitalized and there is no regulatory limit on credit exposure to an adequately capitalized correspondent under the final rule. Although respondents will need to obtain information on correspondents' capital ratios in order to demonstrate that correspondents are at least adequately capitalized, bankers' banks can reduce this burden by providing the information to their respondents directly. To the extent that bankers' banks are concerned that the burden of meeting the requirements of the rule's prudential standards will cause banks to transfer business from a bankers' bank to a Federal Reserve Bank or Federal Home Loan Bank, the Board believes that the more extensive guidance provided in the language of the final rule will reduce this effect.

The Board believes that including bankers' banks within the scope of the rule is appropriate. Bankers' banks represent a concentration of interbank risk because they rely exclusively on interbank liabilities and because their assets subject them to the same risks as other banks. Further, an exception for bankers' banks could alter the market for correspondent services, possibly increasing risk as correspondent business moves to such special purpose banks. With regard to arguments that including bankers' banks as correspondents under the rule will force banks to obtain services from their competitors, the Board notes that banks often do business with competitors.

Sixteen commenters asserted that the rule would result in a reduction in deposits at bankers' banks which, in turn, would reduce the capacity of bankers' banks to provide "overline" loan and participation arrangements and other correspondent services. The Board believes that the demand for these services will provide incentives for banks to continue to do business with bankers' banks rather than shifting to Federal Reserve Banks or Federal Home Loan Bands, which provide only limited services.

Six commenters stated that the proposed rule would preclude a bankers' bank from raising capital when it is most needed because banks could not increase exposure to the bankers' bank through stock investments. Although most bankers' banks are well or adequately capitalized, the Board recognizes that the capital of bankers' banks generally represents exposure of the owner-customers of the bankers' bank. The Board notes, however, that capital ratios may be increased by other means, such as by reducing certain assets of the bankers' bank.

Restriction of Coverage to Large, Weak Banks

Fifty-nine commenters concerned with the regulatory burden imposed by the proposed rule urged that the rule focus exclusively on banks that might be considered "too big to fail." Thirty-five of these commenters, twenty-eight of whom submitted a substantially similar letter, suggested that the Congressional intent was to focus on the risk caused by the failure of a large depository institution, and that small banks were not to be affected by the regulation. In addition, thirty-five commenters, thirty of whom submitted a substantially similar letter, urged the Board to exempt exposure to well-capitalized correspondents from the regulation or at least to treat exposure to them no differently than exposure to a Federal Reserve Bank.

Although the introductory language in section 308 refers to the failure of a large depository institution, the text of the statute directs the Board to limit risks posed by exposure to "any other depository institution." Further, excluding exposure to small correspondents from the rule could cause correspondent business to shift to small correspondents, regardless of their financial condition, thereby increasing the risk that the failure of a small correspondent would cause the failure of other banks. Finally, entirely excluding exposure to well-capitalized correspondents could encourage banks to take exposure to a well-capitalized correspondent that may be excessive in relation to the overall financial condition of the correspondent. Thus, the Board believes that the definition of "correspondent" should not exclude depository institutions on the basis of size or capitalization.

Expansion of the Definition of Correspondent

Nine commenters expressed concern about competition in the correspondent business from nonbanks and credit unions. Three of these commenters proposed that the definition of correspondent encompass all providers of correspondent services, including nonbanks. One commenter pointed out that Edge Act companies are not defined as correspondents but are included as subsidiaries.

The Board notes that the interbank liability provisions of section 308 concern exposure to depository institutions, not to financial service providers generally. The definition of "correspondent" in the proposed rule was limited to institutions that receive special treatment under the capital adequacy guidelines, which provide that claims against certain foreign banks and federally insured domestic depository institutions generally are given a 20 percent risk weight.[7] Furthermore, the Board does not believe that nonbank providers of correspondent services, including credit unions, provide a full range of correspondent services in competition with traditional correspondents or that risk to banks will increase materially through migration to providers of services that are not covered by the rule. Finally, the failure of financial institutions that are not insured by the Federal Deposit Insurance Corporation would not pose a threat to the Federal Deposit Insurance funds through invocation of "too big to fail."

Final Rule

The definition of correspondent has been amended to exclude commonly controlled correspondents that are subject to cross-guarantees under the

[7] Claims against other types of financial institutions generally are given a 100 percent risk-weighting under the capital adequacy guidelines.

Federal Deposit Insurance Act. The proposed rule excluded commonly controlled correspondents from the limits on credit exposure, but not from the prudential standards. In the final rule this exclusion has been extended to the prudential standards for consistency. This exclusion does not affect the applicability of other statutory provisions governing transactions with affiliated institutions, such as section 23A of the Federal Reserve Act (12 U.S.C. 371c).

Section 206.2(c) Exposure [Final Rule—Section 206.2(d)]

The proposed rule defined "exposure" as the risk that payment to complete a transaction will not be made in a timely manner or that an obligation will not be paid in full. The definition further provided that "exposure" includes the operational and liquidity risks related to the settlement of transactions and risk related to the creditworthiness of a correspondent. Both overnight and intraday exposure were covered by the definition. The proposed rule required exposure to be monitored under the prudential standards. The Board received twenty comments on this section.

Scope of the Definition

Ten commenters urged that the scope of the definition be restricted. Nine commenters suggested that the definition of exposure include only significant exposure measured by the amount at risk and the product line at issue to a particular correspondent. Four of these commenters suggested that the Board provide guidance, such as that in the payments system risk policy, as to what constitutes significant exposure. One commenter urged that the definition exclude items covered by FDIC insurance. Another commenter suggested that the purchase and sale of Treasury securities be excluded. One commenter suggested that the Board exclude settlement risk from the definition of exposure. Another commenter suggested that the settlement risk in delivery-versus-payment systems be excluded. Two commenters, clearinghouses, suggested that the settlement risk attendant to a clearing and settlement system that includes settlement finality should be excluded from the definition of exposure because it is insignificant. One commenter asked the Board to exclude collateralized interest rate swaps from the definition of exposure. Another commenter questioned whether other exposures like payroll, pending ATM, and coin and currency settlements should be included in exposure. One commenter suggested that the definition of exposure distinguish exposure due to capital market transactions from exposure due to correspondent banking activity. In addition, four commenters urged the exclusion of short-term exposure. One commenter suggested that the rule exclude all exposure with a maturity of less than 14 days, two others urged the exclusion of demand deposits, and the fourth called for the exclusion of federal funds transactions. Three commenters expressed concern that regulators would unreasonably expand the definition.

The final rule excludes certain lower-risk transactions from the definition of "credit exposure," which is the measure of exposure subject to a specific regulatory limit under the rule. The general definition of "exposure" used in the final rule, however, covers all types of transactions that create a risk of nonpayment or delayed payment. The Board believes that banks should consider all types of financial exposure in establishing prudential policies and procedures. As discussed in the summary of the final rule, however, the prudential standards in the final rule have been amended to clarify that a bank is not required to treat all types of exposure in the same manner, and that a bank's internal policies and procedures may provide for differential treatment of exposure based on the form, maturity, and size of the exposure, as well as on the condition of the correspondent.

Clarification of the Definition

Seven commenters found the definition of exposure too vague. Two commenters sought clarification of the definition of settlement risk. One commenter asked for clarification of how settlement risk relates to automated clearinghouse (ACH) transactions. One commenter urged that exposure arising out of credit card transactions should be excluded from the definition of exposure because a bank cannot control the banks to which it has this exposure. In this regard, the Board notes that exposure arising from the following transactions generally is insignificant because the exposed bank usually has prompt recourse to other parties or because the amounts involved are not significant: (1) A collecting bank's risk that a check will be returned, (2) an originating bank's risk that an ACH debit transfer will be returned or its settlement reversed, (3) a receiving bank's risk that settlement for an ACH credit transfer will be reversed, or (4) a credit card transaction. Under the final rule, a bank is not required to conduct periodic reviews of the financial condition of a correspondent where the amount of the exposure is insignificant and would not be required to limit exposure unless there is a significant risk that payment will not be made as contemplated.

Another commenter requested clarification of the terms "liquidity risk" and "operational risk" used in the definition of exposure. Liquidity risk is the risk that payment will be delayed for some period of time. For example, a bank is subject to the liquidity risk that a payment due from a failed correspondent will not be made on time; the bank's credit risk may be a lesser amount due to later distributions from the correspondent's receiver. Liquidity risk is included in the definition of exposure in the final rule. Operational risk if the risk that operational problems at a correspondent, such as computer failure, may prevent it from making payments, thereby creating liquidity risks for other banks, and is also included in the definition of exposure in the final rule.

One commenter asked if correspondent obligations that a bank holds in a fiduciary capacity are excluded. Because obligations held in a fiduciary capacity do not expose the bank itself to loss due to credit, liquidity, or operational problems, such obligations are not included in the definition of exposure.

One commenter argued that depository institution equity securities taken as collateral or in satisfaction of a debt should be excluded from the definition of "exposure" because they are not payment obligations. Such transactions are covered by the definition of "exposure," in the final rule, as they create a credit risk to the bank should the depository institution fail. The definition in the final rule has been redrafted for clarity.

Section 206.2(d) Foreign Banks [Final Rule—Section 206.2(e)]

The proposed rule defined a "foreign bank" as an institution that is organized under the laws of a country other than the United States, engages in the business of banking, is recognized as a bank by the bank supervisory or monetary authorities of the country of the bank's organization, receives deposits to a substantial extent in the regular course of business, and has the power to accept demand deposits. Foreign banks were included in the definition of correspondent in the proposed rule. The Board received seven comments on this section.

Exclusion of Foreign banks

Two commenters urged that the rule exclude foreign banks because of the cost and difficulty in obtaining necessary information, such as capital information, and because the proposed rule would harm the competitiveness of U.S. banks in foreign correspondent markets. These commenters also argued that foreign banks do not pose a risk to the deposit insurance fund, or to the U.S. banking system as a whole. An additional two commenters, focusing on the lack of current risk-based capital ratio information and on the decreased risk posed by foreign banks, suggested that exposure to foreign banks be excluded from application of the benchmark guidelines and subjected only to the prudential standards. Two other commenters, however, strongly supported the coverage of foreign banks in the rule, arguing that exclusion would grant such banks a competitive advantage over domestic banks. One commenter, a clearinghouse, noted that its members were divided on this issue.

Foreign banks were included as correspondents under the proposed rule because failure to cover foreign banks could encourage a migration of correspondent and interbank business to foreign banks irrespective of their condition, thereby potentially increasing risk to insured depository institutions. Consequently, the Board does not believe that foreign banks should be excluded from coverage of the limits on credit exposure or the prudential standards. To address problems with obtaining adequate information concerning foreign banks, however, the final rule provides greater flexibility as to the timing and frequency with which a bank must obtain information on the capital levels of its foreign bank correspondents.

Clarification of the Definition

Two commenters called for recognition of the decreased risk posed by a foreign central bank or a bank guaranteed by a foreign government, and perhaps even exclusion of these institutions from coverage as "correspondents" under this rule. The definition of "foreign bank" is based on the criteria used in the risk-based capital guidelines. As those guidelines exclude the central bank of a foreign country, such institutions would be excluded for the purposes of this rule as well. The Board believes, however, that banks guaranteed by foreign central governments may pose risks and should be included as correspondents for the purposes of this rule.

The definition remains unchanged in the final rule.

Section 206.2(e) Primary Federal Supervisor [Final Rule—Section 206.2(f)]

No comments were received on this section, and the definition remains unchanged in the final rule.

Section 206.2(f) Quality Asset [Final Rule—Section 206.4(f)(3)]

The proposed rule defined a "quality asset" as an asset that is not in a nonaccrual status, on which principal or interest is not more than thirty days past due, and whose terms have not been renegotiated or compromised due to the deteriorating financial condition of the primary obligor. Furthermore, under the proposed rule an asset would not be considered to be a "quality asset" if any other loans to the primary obligor on the asset have been classified as "substandard," "doubtful," or "loss" or treated as "other loans specially mentioned" in the most recent report of examination or inspection of the bank or an affiliate prepared by either a federal or a state supervisory agency. Under the proposed rule, a transaction for which a correspondent is only secondarily liable could be excluded from a bank's "credit exposure" to the correspondent as long as the transaction could be considered a "quality asset."

The Board received one comment, which criticized this definition as too restrictive. The commenter urged that the definition include assets on which principal or interest is not more that 90 days past due, as is the standard in SEC Guide 3 Section III C.1. This SEC standard is used for reporting and disclosure purposes and does not appear to be appropriate for the purposes of this rule. The Board believes that the proposed definition, which was derived from section 23A of the Federal Reserve Act (12 U.S.C. 371c), permits a more accurate measure of actual credit exposure. In the final rule the definition of "quality asset" has been incorporated into the section concerning "credit exposure" (§ 206.4).

Section 206.2(g) Subsidiary [Final Rule—Section 206.4(e)]

Under the proposed rule, the term "subsidiary" was given the same meaning as that term under section 23A of the Federal Reserve Act, and therefore included any company in which a bank owns or control 25 percent or more of any class of voting securities. This definition in the final rule has been modified and incorporated into § 206.4, and is discussed below in the description of comments on that section.

Section 206.2(i) Total Capital [Final Rule—Section 206.2(g)]

The proposed rule defined total capital as the total of a bank's Tier 1 and Tier 2 capital under the risk-based capital guidelines provided by the bank's primary federal supervisor. For an insured branch of a foreign bank organized under the laws of a country that subscribes to the principles of the Basle Capital Accord, "total capital" means total Tier 1 and Tier 2 capital as calculated under the standards of that country. For an insured branch of a foreign bank organized under the laws of a country that does not subscribe to the principles of the Basle Capital Accord, "total capital" means total Tier 1 and Tier 2 capital as calculated under the provisions of the Accord. The Board received two comments on this section.

Two commenters requested clarification that the benchmark guidelines would be based on the total capital of a foreign bank, rather than only on the capital of the branch. The limit on credit exposure of the insured branch of a foreign bank is based on the foreign bank's total capital, as defined in this section, not on the imputed capital of the branch.

The definition remains unchanged in the final rule.

Section 206.2(j) U.S. depository Institution [Final Rule—Section 206.2(h)]

The proposed rule defined "U.S. depository institution" as a federally insured depository institution chartered in the United States under federal or state law, and included an insured national bank, state bank, District bank, or savings association, as those terms are defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), but did not include an insured branch of a foreign bank. U.S. depository institutions were included in the definition of "correspondent" in the proposed rule. The Board received eight comments on this section, two of which supported the definition as written.

Scope of the Definition

Three commenters urged the inclusion of credit unions, asserting that they poses risks to the financial system through the large inter-institution liabilities of credit union corporate centrals. Credit unions do not offer a full range of correspondent services to FDIC-insured banks and are not insured by the FDIC. Therefore, the Board does not believe that exposure to credit unions poses risks to insured banks and

to the FDIC insurance funds of the type that section 308 was designed to address.

Clarification of the Definition

Three commenters suggested that the final rule include specific language excluding Federal Home Loan Banks. The Board believes that the definition excludes Federal Home Loan Banks and that a specific exclusion for Federal Home Loan Banks is unnecessary. The definition in the final rule has been redrafted for clarity.

Section 206.3 Prudential Standards

Section 206.3(a) Internal limits. [Final Rule—Section 206.3(c)]

The proposed rule required that a bank establish and maintain policies and procedures to limit exposure to the correspondents with which it does business. The rule further required that banks establish and periodically review and revise, as necessary, limits on exposure to individual correspondents based on an evaluation of the overall financial condition and other factors being on the creditworthiness of each correspondent. Finally, it required that a bank structure these limits to avoid undue concentration of settlement or credit risk with respect to any individual correspondent. Most of the comments received addressed the prudential standards, and 110 of those comments addressed § 206.3(a) on internal limits.

Appropriateness of Internal Prudential Standards

Twenty-four commenters agreed that the prudential standards reflect prudent banking and general industry practice, and twenty-eight commenters indicated that they had already established prudential standards for interbank exposure. Moreover, twenty-four commenters suggested that this provision, supplemented by examination, be the heart of the regulation. On the other hand, forty-two commenters, including five who indicated that they already conduct similar prudential analyses, disagreed with the Board's approach to the problem of interbank liabilities. These commenters argued that the examination process can adequately address the problem, both because adequate controls already exist in the safety and soundness criteria and because the examination and consultative process is superior to regulation. These commenters concluded, therefore, that the rule would impose increased costs without achieving a commensurate reduction in risk. Three of these commenters suggested that the Board conduct an empirical study of the risks associated with interbank liabilities and the cost of controlling those risks.

Thirty-two commenters offered alternatives to the prudential standards. Three suggested approval of correspondent relationships by vote of the bank's board of directors. Eighteen commenters, submitting an identical letter, suggested that the prudential standards require only that a bank obtain information from its correspondents once a year to demonstrate that the correspondents meet appropriate capital standards. One commenter suggested that banks be permitted to tier their prudential standards in a similar fashion as the capital guidelines. Six commenters favored a simple statement that the risks must be addressed, while another suggested that the standard be the same due diligence standard applied to any loan. One commenter urged the Board to require specific, detailed lending policies, similar to those for highly leveraged transactions, while another commenter asserted that only on-site examinations offer a true measure of risk. One commenter suggested that the rule require an annual review of capital, management experience, and income trends.

Implementation of the Requirement

Twelve commenters expressed a desire for greater specificity regarding the preparation and review of the internal limits. Six requested specificity as to the factors that a bank should evaluate or argued that the factors be limited. One commenter sought clarification of whether internal standards could ever be breached. Four commenters indicated that respondents may lack the expertise to analyze the financial condition and risk of larger correspondent banks, particularly where the correspondent has significant off-balance sheet activities. Six commenters expressed concern about the availability of the information. One of these commenters stated that correspondents that compete on other fronts may be unwilling to divulge non-public information. One commenter asked whether banks could rely on information from correspondents. Two commenters expressed concern that call and audit reports do not address overall conditions and operations, although both are mentioned as factors in the proposed rule. Five commenters expressed concern that the proposed rule failed to encourage banks to improve continuously their risk management programs and may encourage banks to abandon a more sophisticated system for one which tracks the guidelines. One of those commenters urged that the Board adopt uniform examination guidelines that reflect to the greatest degree possible existing risk monitoring and control practices.

Final Rule

The primary focus of the final rule is on a bank's analysis of the creditworthiness of its correspondents. Many of the concerns raised by these commenters are addressed by the more extensive guidance in the final rule as to the standards that a bank's internal policies and procedures would be expected to meet. The final rule states that internal procedures should be directed at preventing excessive exposure to a correspondent in relation to the financial condition of the correspondent, and allows banks to adopt flexible policies and procedures to meet this standard. The final rule does not require the same procedures to be used for all correspondents or all types of exposure.

Under the final rule, a bank's internal policies and procedures must provide for periodic reviews of a correspondent's financial condition only where exposure to the correspondents is significant. Periodic review of the financial condition of correspondents to which the bank has only insignificant levels of exposure, such as small balances maintained for clearing purposes, would not be required under the final rule. While the bank's board of directors would be required to review the bank's policies and procedures concerning correspondents on an annual basis, the board would not be required to approve individual correspondent relationships. The final rule also does not require the bank to obtain non-public information on which to base its analysis of the financial condition of a correspondent, but permits use of publicly available information, such as call reports, Uniform Bank Performance Reports, and annual reports.[8]

Additionally, the final rule requires the establishment of internal limits only where the financial condition of the correspondent and the form or maturity of the exposure create a significant risk that payments will not be made as contemplated. The rule does not require a particular structure or method of maintaining such limits, but permits the bank flexibility to structure limits in a

[8] A bank would be required to obtain non-public financial information only in the limited circumstances where no publicly available source of information existed, such as for certain privately owned foreign banks.

manner that will meet the needs of the bank. For example, in appropriate circumstances a bank may establish limits for longer term exposure to a correspondent, while not setting limits for overnight or intraday exposure.

Clarification of the Requirement

Eight commenters inquired whether the Board would permit a lead bank or bank holding company to conduct the prudential analysis for affiliated banks. The final rule clarifies that a bank may rely on its bank holding company, a bank rating agency, or another party to provide financial analysis of correspondents or to select correspondents, as long as the board of directors of the bank has reviewed the assessment or selection criteria used by that party.

Section 206.3(b) Monitoring. [Final Rule—§ 206.3(c)]

The proposed rule required that a bank structure transactions with a correspondent or monitor exposure to a correspondent to ensure that its exposure does not exceed its internal limits established under § 206.3(a) and that its credit exposure ordinarily not exceed any applicable guidelines on credit exposure specified in § 206.4. The Board received 160 comments on this section.

One hundred fourteen commenters, thirty of whom submitted a substantially similar letter, protested the cost burden implicit in the monitoring requirements. Sixteen commenters argued that the costs of the monitoring provisions of the proposed rule outweigh the benefits. Fifty-nine commenters argued that these costs will be exacerbated if banks must spread their correspondent business among a number of banks. Two commenters complained that the cost burden would fall disproportionately. One asserted that small community banks would bear the brunt of it and another asserted it would fall inequitably on the adequately and well-capitalized banks of the Midwest. Seven commenters pointed out that even well-capitalized private correspondents and respondents will have to bear these costs.

Clarification of the Requirement

Six commenters requested clarification as to whether the requirement of the rule would be satisfied by structuring relations so that the limits are not exceeded, such as through agency sales policies. Five commenters urged the Board to consider permitting a lead or parent bank in a bank holding company to monitor exposure for its affiliated banks. Two commenters urged that the monitoring requirements distinguish between significant and insignificant exposure. Another urged that the final rule permit systems consistent with the institution's business, internal systems operations, and personnel. Seven commenters expressed concern that examiners might unduly restrict the regulatory flexibility that was designed to permit the use of diverse existing monitoring and risk control practices. They urged the Board to adopt uniform examination guidelines that would accommodate existing systems. Two commenters suggested as a model the guidelines for self-assessments on payment system risk.

Frequency of Monitoring

Twelve commenters argued that daily monitoring is excessive if not impossible. One commenter asserted that a banker cannot know the balance on a pass-through account. Two other commenters stated that global monitoring of outstanding exposures on a daily basis in products such as interest rate swaps, letters of credit, and other transactions would be extremely difficult, and that banks should be permitted to use their prudential limits as proxies for actual exposure where these limits are below the benchmarks. One commenter urged that the final rule match the frequency of review with the risk, while another urged the Board to permit banks to monitor exposure in arrears and take corrective action should exposure exceed prearranged levels. One commenter urged the Board to permit banks to monitor weekly or monthly averages. Two commenters expressed approval of the proposed rule's acceptance of *ex post* monitoring.

Monitoring Overnight Exposure

Fourteen commenters urged the Board to clarify the requirements for monitoring overnight interbank transactions and to consider eliminating monitoring of these transactions. Four of these commenters stated that the likelihood of a bank failing solely on the basis of its overnight exposure is very remote, and two argued that market factors weed out weak correspondent banks. Five other commenters argued that the regulatory burden on small banks in monitoring and controlling overnight interbank transactions is unreasonable and costly, and could force small banks to transfer their business to Reserve Banks. Another commenter urged the exclusion of overnight federal funds sales from the exposure that must be monitored as long as the sales were made under a preauthorized line to an approved list of correspondents, on the grounds that it may be difficult to determine other exposure to a correspondent at the time of a federal funds transaction.

Monitoring Credit Exposure

Fifteen commenters addressed the issue of monitoring credit exposure. Five of these commenters urged that the proposed rule's acceptance of occasional or inadvertent excesses be maintained and broadened sufficiently that small banks with unexpected large deposits or late incoming wire transfers be permitted to adjust their balances within a day or two. Six commenters expressed concern that the guidelines would be viewed as rigid limits. Another commenter asserted that the proposed rule's acceptance of occasional excesses would be where the trouble spots would arise. Three other commenters requested clarification as to how often and under what circumstances a bank may exceed the guidelines. One commenter suggested that the final rule grant banks time to bring combined credit exposures due to mergers or other acquisitions into compliance with the benchmark guidelines.[9]

Monitoring Intraday Exposure

Eleven commenters urged the Board to eliminate any requirement for intraday monitoring. Three of these commenters stated that most banks, and especially smaller banks, would find it difficult or impossible to monitor and manage intraday exposure. Another commenter expressed concern that banks' attempts to limit intraday exposure by delaying settlements pending receipt of offsetting funds could lead to system gridlock. Two commenters argued that intraday exposure was similar to cash items in the process of collection and should be excluded from the rule. Four additional commenters sought clarification as to whether daylight overdrafts would be violations of the rule.

The Final Rule

The final rule allows a bank to adopt monitoring policies and procedures that are appropriate for the bank's particular situation. The final rule does not require the establishment of limits or monitoring for all sources of exposure to all correspondents. The final rule provides that, for the significant sources of exposure for which internal limits are required, a bank may either monitor exposure or structure transactions to

[9] Other comments on monitoring credit exposure are addressed in the discussion of the guidelines on credit exposure.

ensure that internal limits generally are not exceeded. A bank could accomplish this either by monitoring actual overall exposure, or by establishing individual lines for significant sources of exposure, such as federal funds sales, and establishing procedures to ensure that exposure generally remained within the established lines. A bank could also maintain limits on exposure by establishing limits with correspondents, such as for federal funds sold on an agency basis.

Under the final rule, banks are not expected to monitor exposure to correspondents on a real-time basis. Monitoring generally may be done retrospectively, and the required frequency depends on the extent to which exposure approaches the bank's internal limits, on the volatility of the exposure, and on the condition of the correspondent.

Although the purpose of requiring monitoring or structuring of transactions is to ensure that exposure generally remains within established limits, the final rule recognizes that occasional excesses may occur. The final rule provides that a bank should structure transactions or monitor exposure to a correspondent to ensure that exposure ordinarily does not exceed internal limits, except for occasional excesses resulting from factors such as unusual market disturbances, market movements favorable to the bank, operational problems, or increases in activity. Unusual late incoming wires or unusually large cash letters would be considered examples of the types of activities that could lead to excesses over internal limits that would not be considered impermissible under the final rule. The final rule requires the bank to establish appropriate procedures to address excesses over internal limits.

With respect to intraday monitoring, the Board recognizes that intraday exposure may be difficult for a bank to actively monitor and limit. Under the final rule, intraday exposure, like interday exposure, may be monitored retrospectively. Further, where the risk resulting from intraday exposure is low, taking into account the condition of the correspondent and the size of the exposure, specific limits and monitoring to those limits would not be required under the final rule.

Additionally, to ease monitoring in the case of mergers or acquisitions, the final rule excludes exposure resulting from the merger or acquisition of a bank from the calculation of "credit exposure," for the purposes of the limit on credit exposure for one year after the merger or acquisition.

Under the final rule, a bank's internal policies and procedures are required to limit credit exposure to a less than adequately capitalized correspondent to not more than 25 percent of the exposed bank's capital. Therefore, these monitoring requirements for exposure would also apply to monitoring credit exposure limits.

Section 206.4 Guidelines for Credit Exposure

The proposed rule provided that, in addition to the prudential limits on exposure established by a bank under § 206.3, a bank ordinarily would be expected to maintain credit exposure to an individual correspondent, as calculated under § 206.5, within certain guidelines or limits unless the exposure is to a commonly controlled insured depository institution, as provided in paragraph (b) of that section. The proposed guidelines or limits were structured as "benchmarks" that would be considered prudent outside limits on credit exposure and were not intended to endorse levels of credit exposure that otherwise would not be considered prudent based on the condition and operations of the correspondent. The Board received 112 comments addressing this section specifically.

Elimination of the Guidelines

Forty-three commenters, primarily large banks, opposed the requirement that banks adhere to these limits. Forty commenters argued that the Board should eliminate the guidelines, and three commenters urged that the guidelines be merged into the prudential standards to retain responsibility in management for the safe and sound management of exposure. One commenter proposed that where banks have appropriate internal prudential policies, they need not demonstrate that they are within the guidelines. Seven commenters argued that the proposed rule would require the creation of a comprehensive system to monitor credit exposure, as measured by the rule, simply to demonstrate that credit exposure is substantially within the guidelines. Ten other commenters argued that the benchmarks are crudely calibrated and that compliance with them would divert resources within banks away from activities designed to achieve real reductions in risks. Eight other commenters stated that the guidelines would create costly inefficiencies and reduce interbank liquidity, as banks would reduce exposure to an individual correspondent solely to avoid monitoring costs. One commenter contended that the guidelines would, in effect, penalize banks with existing internal controls. One commenter asserted that many banks lack the information technology that would permit on-line access to information on credit exposure to a specific correspondent, and that purchasing such a system would cost $1 million. Two commenters argued that it is impossible to monitor and therefor to limit global exposure daily.

The Level of the Guidelines

The board received fifty-seven comments concerning the amount of permissible exposure under the guidelines, two of which specifically endorsed the guidelines. Two commenters urged that banks in a bank holding company be permitted to aggregate their credit exposure to individual correspondents in measuring compliance with the guidelines. One commenter argued that the limits were too high and suggested that they not exceed the legal lending limits, which are themselves too high in the opinion of the commenter. The remainder of the commenters argued that the guidelines were too restrictive.

The commenters presented a number of arguments for relaxing the guidelines. Seventeen commenters noted that the benchmarks could force a bank to reduce its exposure to a well-managed, adequately capitalized correspondent while taking more exposure to other correspondents that the bank may not believe are as creditworthy. Eight commenters stated that small banks' federal funds sales can fluctuate dramatically, making continuous compliance costly and difficult. Six commenters expressed concern that cash letter fluctuations would make compliance with the guidelines difficult. Two commenters expressed concern that the guidelines would make it difficult to fund their correspondent to cover payments system transactions. One commenter argued that the guidelines would force inexperienced banks to engage in securities trading in order to avoid federal funds sales.

Sixty-two commenters emphasized the difficulty of diversifying correspondent business in order to comply with the guidelines. Fifty-nine of these commenters focused on the costs of establishing and maintaining additional correspondent relationships, and many argued that the expense of diversification exceeds the reduction in risk. Four commenters asserted that mergers and acquisitions have reduced the number of suitable correspondents. One commenter argued that larger correspondents were not interested in providing services to smaller banks.

Five correspondents argued that concentrating correspondent business is beneficial because a close relationship covering multiple services is important and brings such benefits as preferred customer status. One commenter argued that only by concentrating its correspondent business can a small bank engage in a broad range of transactions, such as settling trades in Treasury bills in an amount large enough to obtain the maximum yield. Six other commenters argued that concentrating correspondent business may reduce systemic risk by facilitating closer monitoring.

Eight commenters contended that reducing exposure by selling federal funds through an agent is more expensive. Four commenters asserted that reducing exposure by shifting from compensating balances to fees reduces profitability because compensating balances often provide a higher return than short-term investments. Another commenter argued that fees created a risk to the correspondent of nonpayment.

Three commenters proposed modifications to the guidelines. One urged an exemption for well-managed banks and two others suggested that the tiers be altered to permit a minimum percentage or dollar amount of acceptable exposure without regard to capitalization.

The Final Rule

The final rule places greater emphasis on analysis of the creditworthiness of correspondents and decreases the emphasis on across-the-board limits. The limit on credit exposure to adequately capitalized correspondents has been eliminated. The limit on credit exposure to correspondents that a bank cannot demonstrate are at least adequately capitalized remains, however. The Board believes that the elimination of the limit for adequately capitalized correspondents will significantly reduce the problems associated with the limits. Because fewer correspondents would be subject to the limits, monitoring to ensure compliance should be less costly. Additionally, because the remaining limit on credit exposure would be implemented as part of the bank's normal policies and procedures, the final rule permits a bank to choose to implement the limit through structuring of relationships or monitoring.

Section 206.4(a)(1) Well-Capitalized Correspondents [Final Rule—Included With Adequately Capitalized Correspondents Under Section 206.4(a)(1)]

The proposed rule stated that, except as otherwise provided in § 206.3, a bank need not limit its credit exposure to a correspondent that the bank can demonstrate is well capitalized, as defined in § 206.6 of the proposed rule. The Board received three comments on this section, two of which strongly endorsed the rule as written.

One commenter expressed concern that regulators will restrict respondent's discretion in creating exposure to well-capitalized banks and that respondents, fearing that, will themselves restrict their exposure, reducing liquidity and fragmenting correspondent relationships. The final rule continues to provide that, while prudential limits to well-capitalized correspondents may be appropriate, these limits are not bounded by an express limit in the rule.

Section 206.4(a)(2) Adequately Capitalized Correspondents [Final Rule—Included in Section 206.4(a)(1)]

The proposed rule provided that a bank ordinarily should limit its daily interday credit exposure to a correspondent that the bank can demonstrate is adequately capitalized, as defined in § 206.6 of the proposed rule, to an amount equal to not more than 50 percent of the bank's total capital. The proposed rule also provided that, for such a correspondent, the bank ordinarily should limit its daily inter-day credit exposure with a remaining term to maturity of more than thirty days to an amount equal to not more than 25 percent of the bank's total capital. Twenty-three commenters specifically addressed this section.

Elimination of Limit

Eighteen commenters suggested that the final rule eliminate the distinction between adequately and well-capitalized correspondents altogether.

A number of banks argued that this provision would have an adverse effect on adequately capitalized banks or that the difference between adequately and well-capitalized banks was not meaningful. One commenter argued that the rule would interfere with an adequately capitalized bank's ability to compete in international funding markets. Three commenters pointed out that, although the difference between a well-capitalized bank and an adequately capitalized bank is insignificant at the margin, the rule imposes a significant monitoring burden on respondents dealing with an adequately capitalized correspondent. Two other commenters asserted that the burden of complying with the rule would lead respondents to cease to do business with adequately capitalized banks. Three commenters argued that it would be very difficult for banks to regain market share if they drop, even temporarily, from well to adequately capitalized. Two commenters suggested that the rule may exacerbate systemic risk by restricting credit to a bank when that bank's capital declines by an arbitrary amount.

Two commenters complained that, in effect, the rule would force banks to restrict their exposure to transactions with maturities shorter than 30 days, leading banks to concentrate bank funding in shorter maturities, rather than balancing short- and long-term exposure. These commenters also argued that the rule would force banks to buy securities, reducing liquidity and exacerbating the credit crunch. In addition, two commenters expressed concern that misunderstanding of the purpose of the capital classifications could lead to a retreat from institutions that do not pose a risk to the banking system or to their customers, but that do not meet the standards to be considered "well capitalized."

Proposed Changes

Six commenters proposed changes to the guidelines concerning adequately capitalized banks. Two commenters suggested that the 25 percent limit only apply to exposures with a maturity of over 90 days. One suggested that the only restriction on banks dealing with adequately capitalized correspondents be a limit of 50 percent of capital on exposure with maturities of 90 days or more. Two other commenters suggested that the exposure limit be increased to 100 percent of capital with a 50 percent limit for 30 day maturities. Conversely, one commenter suggested that the Board eliminate limits on credit exposure with maturities longer than 30 days, asserting that tracking exposure by maturity is expensive, especially for small banks, and that as a result banks will eliminate exposure to adequately capitalized banks.

The Final Rule

The final rule does not include a regulatory limit on credit exposure to adequately capitalized institutions. The Board believes that this change will reduce monitoring costs and avoid unwarranted reductions in the business of adequately capitalized banks due to the implementation of section 308. Elimination of this limit also reflects the difficulty in setting an appropriate

exposure limit that reflects the actual credit and liquidity effects of a correspondent's failure in light of prompt partial payment by the FDIC.

Further, the proposed limit on credit exposure for adequately capitalized correspondents served largely as a transition from the unrestricted credit exposure permitted for well-capitalized correspondents to the 25 percent limit for less than adequately capitalized correspondents. The prudential standards of the proposed final rule have been modified to address this issue more directly by emphasizing analysis of the creditworthiness of a correspondent and requiring a bank to take into account any deterioration in the financial condition of its correspondent.

Finally, credit exposure in excess of 25 percent of the bank's total capital would not be "grandfathered" under the proposed final rule, thus encouraging a bank with significant credit exposure to a correspondent that is in danger of slipping below adequately capitalized to limit the maturity of any credit exposure in excess of the 25 percent guideline.

The final rule also reduces the need for a rapid reduction in exposure to a correspondent that has slipped below adequately capitalized by extending the transition provision to 120 days, allowing the bank more time to evaluate exposure and restructure activities.

Section 206.4(a)(3) Other Correspondents [Final Rule—Incorporated in Section 206.4(a)(1)]

The proposed rule provided that a bank ordinarily should limit its daily interday credit exposure to a correspondent that the bank cannot demonstrate is well or adequately capitalized to an amount equal to not more than 25 percent of the bank's total capital. The Board received nine comments on this section, one of which supported the regulation as written.

Three commenters proposed that the rule increase permissible exposure to 50 percent of capital. One of these commenters suggested that this increase be contingent upon the respondent conducting due diligence quarterly. Another commenter argued that restricting exposure to less than adequately capitalized banks would increase the likelihood of their failure. Three commenters suggested that the final rule be more stringent. Two suggested that the rule prohibit any uninsured exposure to a significantly or critically undercapitalized correspondent, and the other suggested that the rule prevent significantly undercapitalized banks from purchasing federal funds or certificates of deposit with maturities over seven days. Finally, one commenter questioned why the proposed rule did not distinguish between undercapitalized, significantly undercapitalized, and critically undercapitalized banks.

As discussed above, the limit on credit exposure to correspondents that a bank cannot demonstrate are at least adequately capitalized has been retained in the final rule. Greater credit exposure to such correspondents would generally create undue risk to banks. However, the Board does not believe that additional guidelines to address more significantly impaired correspondents are warranted. Banks' prudential policies and procedures should address exposure to particularly troubled correspondents.

Section 206.4(b) Commonly Controlled Insured Depository Institutions [Final Rule—Section 206.2(b) and (c)]

The proposed rule provided that, except for the general prudential standards in § 206.3, a bank need not limit its credit exposure to a correspondent that is commonly controlled with the bank and for which the bank is subject to liability under section 5(e) of the Federal Deposit Insurance Act.

The proposed rule defined a correspondent as commonly controlled with the bank if 25 percent or more of any class of voting securities of the bank and the correspondent were owned, directly or indirectly, by the same depository institution or company; or, either the bank or the correspondent owns 25 percent or more of any class of voting securities of the other. Exposure to a commonly controlled depository institution was excluded from the limits on credit exposure because there is no effective way for an insured bank to limit its credit exposure to an FDIC-insured depository institution that is commonly controlled with the bank. The cross-guarantee provisions of the Federal Deposit Insurance Act make an insured depository institution potentially liable to the FDIC for losses resulting from the failure of a commonly controlled insured depository institution. The Board received fourteen comments on this section, three of which supported the section as written.

Substantive Comments

Eleven commenters criticized the exemption for commonly controlled institutions. Eight of them, submitting a substantially similar letter, argued that this provision would permit big banks to evade the purpose of the statute by shifting funds among commonly controlled institutions. Another commenter argued that depositor risk is measured by institutions and that risk to the deposit insurance system is not reduced because of bank consolidation. The commenter questioned whether the rule reflects a regulatory bias towards consolidation. In contrast, two other commenters argued that the Board should exclude inter-affiliate transactions from the rule entirely.

The provisions of the proposed rule reflected the authority of the FDIC to invoke cross-guarantees and thereby override any efforts of a bank to limit exposure to a commonly controlled correspondent, as well as current inter-affiliate funding arrangements within bank holding companies. Because of the cross-guarantees, disruption of these arrangements would not yield a commensurate reduction in risk to the FDIC insurance funds or to the banking system. The Board believes that exposure to commonly controlled correspondents should not be covered by either the limits on credit exposure or the prudential standards provisions of the final rule, as a bank cannot effectively limit its exposure to such correspondents under either provision. However, the Board notes that section 23A(a)(4) of the Federal Reserve Act would continue to apply to transactions with affiliates, including commonly controlled insured depository institutions.

One commenter suggested that the exclusion apply to banks that own shares in bankers' banks. The Board does not believe that it is appropriate to apply the exclusion to owners of a bankers' bank because the failure of the bankers' bank would not subject the owners to the cross-guarantee provisions of section 5(e) of the Federal Deposit Insurance Act.

Drafting

Two commenters suggested that the exception include banks subject to the provisions of section 23A of the Holding Company Act. This portion of the rule reflects those banks subject to the cross-guarantee provisions, which will cover virtually all those covered by section 23A.

This provision has been retained in the final rule but has been moved to the definitions section with conforming drafting changes.

Section 206.4(c) Exposure of Subsidiaries [Final Rule—Section 206.4(e)]

The proposed rule provided that, in calculating credit exposure to a correspondent under this part, a bank must include the credit exposure of the bank's subsidiaries to the

correspondent. If the bank did not own 100 percent of the shares of the subsidiary, the proposed rule required the bank's credit exposure to include a *pro rata* portion of the subsidiary's exposure, based on the percentage ownership of the bank in the subsidiary. The purpose of this section was to capture the full exposure of a bank to a correspondent. The Board received five comments on this section.

Four commenters argued for restricting the scope of the regulation to subsidiaries of which the bank owns a majority of the voting stock. Two commenters argued that where a bank owns only a minority position, it may be unable to obtain daily exposure figures. Three commenters stated that the parent bank is unlikely to have consolidated systems for calculating exposure for minority-owned subsidiaries, and one noted that the percentage ownership may not justify the expense to the subsidiary of establishing an information reporting system for the shareholder bank. One of the commenters argued a bank cannot cause a subsidiary that the bank does not control to reduce its exposure, and the bank therefore could ensure compliance with the limits only by selling its interest in the subsidiary or by reducing its own exposure to the counterparty. Finally, three commenters argued that where the subsidiary is not included in the bank's consolidated financial statements, but is only reported as an investment, the parent's exposure is not the subsidiary's exposure but is limited to the bank's investment.

One commenter queried how the *pro rata* portion should be determined if a bank holds different classes of stock in the subsidiary. This commenter suggested that the provision only apply to banks holding common stock because the same credit exposure does not exist if the bank holds preferred stock, and proposed that where a bank holds a different class of stock, it should be permitted to use any reasonable method to calculate exposure.

In formulating the proposed rule, the Board noted that banks may assume obligations to support a subsidiary beyond their actual investment. However, the Board has modified the final rule to require a bank to include with the bank's own credit exposure 100 percent of the credit exposure of any subsidiary that the bank is required to consolidate on its Report of Condition and Income or Thrift Financial Report. This provision generally captures the credit exposure of any majority-owned subsidiary of the bank. Under the final rule, therefore, none of a minority-owned subsidiary's exposure and all of a majority-owned subsidiary's exposure would be included in the parent bank's exposure calculation.

Section 206.4(d) Transition Provisions [Final Rule—Section 206.4(a)(2)]

The proposed rule required that, where a bank is no longer able to demonstrate that a correspondent is adequately capitalized or well capitalized for the purposes of § 206.4(a)(1) or (2), including where the bank cannot obtain adequate information concerning the capital ratios of the correspondent, the bank should reduce its credit exposure to the appropriate level under § 206.4(a) within 30 days after the date when current call report or other relevant financial data normally would be available. The Board received forty-seven comments on this section.

Extension of the Transition Period

Forty-five commenters expressed concern about the increase in monitoring requirements when a correspondent drops from well to adequately capitalized, the competitive impact on the correspondent, and compliance burdens. These commenters urged the Board to avoid overreaction to temporary dips in capital and to extend the transition period. Thirty of these commenters, submitting a substantially similar letter, proposed that banks be given one year to resume well-capitalized status. Eight commenters recommended transition periods ranging from 90 to 120 days. Four commenters noted that a variety of factors, such as regulatory changes, increases in reserves, asset revaluation, or acquisitions, could cause a bank's capitalization ratio to change abruptly without necessarily signifying significantly increased risk. Another commenter argued that the proposed rule, as written, would require a swift, abrupt adjustment to temporary swings in capital, resulting in a market bias for banks with capital less subject to fluctuations. Five commenters argued that where the credit exposure consists of off-balance sheet items or instruments with maturities of longer than 30 days, judicious reductions in credit exposure may not be possible within the rule's time frame. Three others stated that delays in financial reporting, especially where the respondent relies on a reporting service, may make compliance with the transition provisions extremely difficult.

One commenter inquired whether a respondent must adjust its exposure if the correspondent provides assurances that it will reacquire its former status within the next reporting period.

The Board believes that a longer transition period of at least a calendar quarter will avoid undue disruptions in correspondent relationship for temporary declines in capital ratios by allowing the correspondent an opportunity to bring its capital ratios back the relevant levels before the next quarterly report. The extended period will also provide the exposed bank more time to implement any monitoring required to demonstrate compliance with the regulatory limit and to adjust the maturities or level of exposure to the correspondent. Accordingly, the final rule would permit a bank 120 days to reduce its credit exposure to a correspondent.

If a bank has been relying on information from call reports or from a bank rating service for a correspondent's capital ratios, the 120-day period would run from the date when the call report or bank rating reflecting the correspondent's reduced capital ratios was received, or from the date that the information normally would be received. If a bank has been relying on information received from the correspondent to demonstrate that the correspondent is at least adequately capitalized, and the correspondent is no longer providing such information, the 120-day period would run from the date when the bank ordinarily would have received the information from the correspondent.

Section 206.5 Credit Exposure [Final Rule Consolidated in Section 206.4]

Section 206.5(a) Scope of Credit Exposure [Final Rule—Section 206.4(b)]

The proposed rule defined the credit exposure of a bank to a correspondent as the bank's assets and off-balance sheet items that are subject to capital requirements under the capital adequacy guidelines of the bank's primary federal supervisor and that involve claims on the correspondent. The proposed rule excluded certain relatively lower-risk items. In addition, for the purposes of this section, the rule provided that off-balance sheet items were to be valued on the basis of current exposure. Under the proposed rule, "credit exposure" was subject to the numerical benchmark guidelines or limits. In addition to the comments concerning the definition of exposure, addressed in § 206.2(c) above, the Board received ten comments on the definition of credit exposure.

One commenter noted that credit exposure is difficult to measure and criticized the proposed rule's emphasis on it. The proposed final rule deemphasizes credit exposure by

eliminating the regulatory limit on credit exposure to adequately capitalized correspondents. While most of the commenters addressed the specific exclusions from the calculation of credit exposure, one commenter expressed concern about the inclusion of derivative instruments, such as swaps, in the calculation of interbank exposures, especially in light of the fact that non-bank correspondents or parties to derivative instruments are excluded. This commenter argued that the rule would drive the derivative business to non-bank counter-parties, weakening the safety protocols introduced into the swaps and other derivative markets as a result of bank participation in the markets. The Board believes that banks should have similar controls on credit exposure to nonbanks as on credit exposure to banks. However, exposure to nonbanks was not addressed by the statute. Further, the Board believes that it is not appropriate to exclude credit exposure from derivative instruments from the rule, as it represents a significant source of interbank exposure in many cases.

One commenter argued that depository institution equity securities taken as collateral or in satisfaction of a debt should be excluded from the definition of "credit exposure" because these instruments are not payment obligations. Such transactions give rise to a risk of loss if the correspondent fails, and therefore are covered by the definition of "credit exposure." In some circumstances, however, obligations collateralized by bank stock may qualify for exclusion under 206.4(d)(3) of the final rule. The definition in the final rule has been redrafted to clarify that capital instruments issued by the correspondent are included in the definition of "credit exposure."

Another commenter asked if the calculation of "current replacement value" for interest rate and foreign exchange contracts means that banks must make daily mark-to-market calculations on a counterparty by counterparty basis. The rule provides that monitoring must be on a mark-to-market basis. However, the marking need only be done at the appropriate monitoring intervals, which depend on the factors listed in the revised monitoring provision discussed above, not daily. One commenter stated that it has a sophisticated system which measures fractional rather than mark-to-market exposure, and inquired whether it may use its own system rather than the proposed rules. As noted above in the discussion of monitoring, alternative systems may be used where they will effectively maintain exposure within the prescribed limits.

Six commenters urged that settlement exposure be specifically excluded for the sake of clarity. Two commenters urged that intraday exposure be specifically excluded. One commenter suggested that intraday exposure be defined as exposure of less than 24 hours.

The proposed final rule has been redrafted for greater clarity, specifying that intraday or settlement exposure and agented funds are not included in "credit exposure."

Section 206.5(b) Netting [Final Rule—Section 206.4(c)]

The proposed rule provided that transactions covered by netting agreements that are valid and enforceable under all applicable laws may be netted in calculating exposure. The Board received two comments on this section.

One commenter urged the Board to permit mutual correspondents to deduct the reciprocal "due from" balances from exposure limits because they reduce exposure risk. Another commenter requested that the Board clarify the requirements that a bank "must have reasoned legal opinions" that netting contracts are valid and enforceable.

Under the final rule, the netting provision remains unchanged. Reciprocal "due from" balances that do not result in legally binding netting do not reduce credit risk to the same extent as legally binding netting. Reasoned legal opinions that netting contracts are valid would include opinions of counsel describing the legal reasoning that led to the conclusions expressed in the opinions.

Section 206.5(c) Exclusions [Final Rule—Section 206.4(d)]

The proposed rule established four exclusions to the scope of credit exposure.

Section 206.5(c)(1) Secured Transactions [Final Rule—Section 206.4(d)(1)]

The first exclusion involved transations, including reverse repurchase agreements, that are fully secured by government securities or readily marketable collateral having a current market value equal to 100 percent of the credit exposure under the transaction. For the purpose of this exclusion, "government securities" were defined as obligations of, or obligations fully guaranteed as to principal and interest by, the United States government or any department, agency, bureau, board, commission, or establishment of the United States, or any corporation wholly owned directly or indirectly by the United States. "Readily marketable collateral" means financial instruments or bullion that may be sold in ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or a similarly available daily bid- and ask-price market. Both of these definitions were taken from the Office of the Comptroller of the Currency's lending limits on national banks. The Board received six comments on this section.

Two commenters suggested that this exception cover transactions to the extent that they are secured. The final rule has been redrafted to exclude transactions to the extent that they are secured.

Two other commenters suggested that the definition of government securities include those backed by the full faith and credit of a state government as well. The definition of government securities has not been changed, but the Board believes that most state securities would be covered by the definition of "readily marketable collateral." Transactions secured by these securities, therefore, would be excluded from credit exposure.

One commenter asked if letters of credit guaranteed by the Export-Import Bank of the United States would be considered government securities. The Board notes that, regardless of whether guaranteed letters of credit would be considered to be government securities, such transactions generally would qualify for exclusion from the calculation of credit exposure provided under § 206.4(d)(3) of the final rule (see discussion under "Quality assets").

Another commenter expressed concern that the exclusion for transactions secured by government-backed securities would lead to increased investment in government securities and decreased loans. The Board recognizes that the rule could encourage investment in government securities, but investment in government securities reflects lower credit risk than many other transactions and is consistent with the capital guidelines.

Section 206.5(c)(2) Cash Items in the Process of Collection (CIPC) [Final Rule—Section 206.4(d)(2)]

The second exclusion from the calculation of credit exposure covered the proceeds of checks and other cash items deposited in an account at a correspondent that are not yet available for withdrawal. The Board received nine

comments on this section, three of which supported the section as written.

Three commenters expressed concern about the rule's treatment of when a cash item becomes exposure. One asked if "due from" balances should be measured by the actual available balance as reported by the bank on its internal ledger balance. The final rule requires that such balances be measured by the actual available balance. Two trade associations commenting on the rule stated that current correspondent practice is to make funds available as early in the day as possible, causing respondents under the proposed rule to incur a measurable exposure for a longer period of time and perhaps before collection of the underlying item has actually taken place. The Board notes that the valuation of cash items in the process of collection that would not be considered to be deposits by the FDIC, acting as receiver of a failed bank, can only be made after the fact. The Board believes, however, that the proposed standard best approximates this value and has retained it in the final rule.

Clarification

Six commenters asked what comparable items are included in "checks and other cash items." One commenter specifically suggested that credit card and debit card transaction be covered by the exclusion. Two commenters urged that it exclude all cash items, since the associated risk tends to be relatively short in duration. While cash items that are not treated as "agency" transactions by the FDIC clearly result in credit risk and should be included in credit exposure, the Board believes that it is appropriate to exclude from credit exposure any item that the FDIC treats as being collected in an agency capacity rather than as a deposit or claim. The Board does not believe, however, that the FDIC has addressed whether the credit and debit card transactions are collected in an agency capacity.

Miscellaneous

One commenter asked if the Board would provide systems support in accounting for settlement exposure and cash items in the process of collection. The Board believes that this support is better provided by the market, and that correspondents may provide such support.

This exclusion remains unchanged in the final rule.

Section 206.5(c)(3) Quality Assets [Final Rule—Section 206.4(d)(3)]

The third exclusion covered "quality assets" on which the correspondent is secondarily liable or that result in secondary exposure to the correspondent, including loans to third parties secured by stock or debt obligations of the correspondent, loans to third parties purchased from the correspondent with recourse, and loans or obligations of third parties backed by stand-by letters of credit issued by the correspondent. The Board received three comments on this section.

One commenter expressed concern that the definition of "quality asset" raises the possibility that a loan secured by the stock of a correspondent may lose its status and be counted as exposure, discouraging such loans. Another commenter suggested that the rule give an exposed bank at least 30 days to adjust to a decline in the quality of a quality asset. The third commenter argued that credit exposure backed by a quality asset, such as a letter of credit, should be excluded from the definition of credit exposure.

In the final rule the exclusion for quality assets has been broadened to include direct exposure to a correspondent that is backed by a creditworthy obligor as well as a correspondent's secondary exposure on a quality asset. Additionally, under the final rule, the potential for excesses in exposure is recognized and a bank is required to have appropriate procedures to deal with such excesses.

Section 206.5(c)(4) FDIC-Insured Amounts [Final Rule—Section 206.4(d)(5)]

No comments were received on this section and it remains unchanged in the final rule.

Mergers and Acquisitions [Final Rule—Section 206.4(d)(4)]

As noted above, one commenter suggested that banks be given time after a merger to bring exposure within the guidelines for credit exposure. The final rule excludes exposure that results from a merger or acquisition of a bank from the definition of "credit exposure" for one year after the merger or acquisition. This exclusion gives banks one year to merge their systems for monitoring credit exposure.

Section 206.6 Capital Levels of Correspondents [Final Rule—Section 206.5]

The proposed rule provided that, for the purpose of compliance with the credit exposure guidelines, a correspondent would be considered "well capitalized" if the correspondent has a total risk-based capital ratio of 10.0 percent or greater, a Tier 1 risk-based capital ratio of 6.0 percent or greater, and a leverage ratio of 5.0 percent or greater. A correspondent would be considered "adequately capitalized" if the correspondent has a total risk-based capital ratio of 8.0 percent or greater, a Tier 1 risk-based capital ratio of 4.0 percent or greater, and a leverage ratio of 4.0 percent or greater. As used in the proposed rule, the terms "well capitalized" and "adequately capitalized" were similar but not identical to the definition of those terms as used for the purposes of the prompt corrective action standards under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) ("prompt corrective action standards"). The proposed rule further provided that a correspondent that is a foreign bank may be considered "well capitalized" or "adequately capitalized" under this section without regard to the minimum leverage ratios required under subparagraphs (a)(1)(iii) and (a)(2)(iii) of this section of the proposed rule. The Board received 137 comments on this section.

Criticism of the Emphasis on Capital

Sixteen commenters disagreed with the Board's approach to structuring the limits on credit exposure. Ten commenters argued that the proposed rule overemphasized capital relative to other creditworthiness indicators such as liquidity, asset quality, earnings strength, regional and product line portfolio diversity, and operating environment. These commenters expressed concern that the proposed rule could encourage banks to focus on capitalization rather than on their own, broader based, prudential systems for analyzing correspondent credit or on the efficiency or competitiveness of the correspondent's payments and processing systems. In addition, seven commenters questioned the value of capital as an indicator of strength. One commenter pointed out that risk-based capital provides a numerical assessment of subjective risks. Another commenter asserted that capital levels measured on a daily or quarterly basis are notoriously inaccurate. A third commenter argued that the limits on credit exposure should be based on the book value rather than on the market value of a correspondent's assets. A bank holding company argued that inadequate loan loss provisions can lead to a misrepresentation of a bank's actual strength. Two commenters suggested that if the proposed rule is seeking an objective measure it should select one which is easy to measure and not subject to frequent fluctuations. One commenter suggested that, as an alternative, the guidelines be based on

the financial markets. In contrast, two commenters pointed out that the advantage of using capital is that it will encourage large banks that are not well capitalized to strengthen their capital position in order to maintain their interbank business. The final rule has been amended to de-emphasize the capital of correspondents by removing the limit on credit exposure to adequately capitalized correspondents.

Monitoring Capital of Domestic Banks

Sixteen commenters argued that gathering and analyzing data to the extent required by the rule is extremely difficult and unfairly burdensome, and that small banks lack the technical capacity and resources to conduct this analysis. Eight commenters objected to the cost of monitoring capital. Another commenter claimed that large banks may resist giving capitalization information to smaller banks seeking to initiate a correspondent relationship. Moreover, this commenter pointed out that prompt corrective action rules forbid advertizing capital levels. One commenter argued that without access to its correspondent's examination report, it would be unable to determine if the correspondent was adequately capitalized. Four commenters noted that CAMEL ratings are confidential.

Nineteen commenters suggested that regulatory agencies publish capitalization ratings, lists of well and adequately capitalized correspondents, or exposure limits for particular correspondents, domestic and foreign. These commenters justified the request by arguing that regulatory agencies have access to the information and have the capacity to make a more complete evaluation of safety and soundness. One commenter urged that the regulatory authorities release the data they have available. Five others urged that call reports or financial reports be altered to require banks to disclose capital adequacy.

Four commenters expressed concern that small banks will be unable to analyze capitalization information from a call report due to the length and complexity of the document. Four commenters urged that where federal funds are sold on an agency basis, the respondent should be able to rely on the capitalization information supplied by the agent. One commenter expressed concern that although the regulation only required a ratio analysis, respondents will ask for quarterly call reports. Moreover, seven commenters complained of the cost of disseminating this information. One of these commenters, for example, noted that it has 110 respondents to distribute the report to. Two other commenters expressed concern that the compliance burden would increase the advantage enjoyed by other financial service providers. One commenter proposed that the Board draft a model form with only the essential information necessary to comply with the rule.

Eight commenters urged the Board to shift the burden from respondents to correspondents. Two commenters proposed that the rule require correspondents to prepare uniform disclosure reports and to disclose promptly any deterioration in capitalization. Two other commenters urged that the rule permit respondents to base their credit assessment on a correspondent's self-assessment of its capital adequacy classification together with any supporting information it may provide. Twenty commenters, nineteen of whom submitted a substantially similar letter, urged the Board to permit respondents to rely on a correspondent's annual documentation of its capital levels. Thirty-four commenters suggested that quarterly submissions satisfy the requirement. One commenter urged the Board to inform correspondents that the financial information provided to other banks is subject to review by examiners and should be consistent with the information provided to regulators.

The Board recognizes that it is currently difficult to obtain information on the risk-based capital levels of a correspondent. Under the final rule, this task is somewhat simplified, as a bank will be required to demonstrate only that its correspondent's capital ratios qualify it as at least adequately capitalized. While the call report for correspondents that are not required to file a complete Schedule RC–R currently does not provide sufficient information to calculate a correspondent's precise capital ratios, it can be relied on to demonstrate that a correspondent is at least adequately capitalized.[10] Further, the Board anticipates that most banks will receive information on their correspondent's capital ratios either directly from the correspondents or from a bank rating agency. Finally, the Board notes that the standard used in the rule is based solely on capital ratios and does not require disclosure of CAMEL ratings.

Five commenters asked for clarification of permissible sources for capitalization information. One claimed that the most accurate information is informal information and sought acknowledgement of the validity of it as a source. Another suggested that the rule explicitly permit banks to rely on call reports in determining capitalization. Two commenters requested that banks be permitted to rely on call reports alone. Three commenters asked the Board to describe a publicly available information base. The final rule does not limit a bank to a single source of information for capital ratios, but indicates that a bank may rely on capital information obtained from a correspondent, bank rating agency, or other reliable source of information. The bank may also rely on information contained in the call report for this purpose. While the Board recognizes that informal information may be useful in evaluating the overall condition of a correspondent, such information is not sufficient to justify the higher levels of credit exposure permitted to adequately or well-capitalized correspondents under the rule. As stated in the summary of the final rule, the rule does not limit a bank to the use of publicly available information, but merely provides that a bank generally is not required to obtain non-public information.

Application of the Provision to Foreign Banks

Thirteen commenters expressed concern about the difficulty and cost of monitoring capital levels of foreign banks. One commenter noted that disclosure of capital information varies widely among foreign banks and another noted that information is difficult to obtain from the institution or from secondary sources. One requested that G–10 banks be required to provide uniform information. Two other commenters suggested that additional flexibility be granted to U.S. banks which deal with non-Basle banks because of the added difficulty in obtaining capital information. Two commenters requested that the Board develop a method to determine the capital levels of foreign correspondents.

One commenter proposed that the rule permit respondents to rely on annual data if that is the best available. Another commenter argued that it is inequitable to require quarterly analysis of the capital of U.S. banks while permitting banks to analyze the

[10] Banks with assets of $1 billion or less generally are required to complete only Part I of the Schedule, which provides a rough estimate of risk-based capital. A bank may assume that its correspondent is at least adequately capitalized if the correspondent has completed only Part I of Schedule RC–R. For correspondents that file a complete Schedule RC–R, the call report does include sufficient information to calculate a correspondent's risk-based capital. The Board expects that further information to facilitate this calculation will be made available prior to the implementation of the regulatory limit on credit exposure to less than adequately capitalized correspondents.

capitalization of foreign banks semi-annually because information on foreign banks is unavailable on a more frequent basis. A third commenter proposed that if information is not available at least semi-annually, exposure to foreign banks should be restricted to 25 percent.

As in the proposed rule, the final rule permits a foreign correspondent to be considered "adequately capitalized" without regard to the level of the foreign bank's leverage ratio. As indicated in the supplementary information to the proposed rule, the Board believes that this treatment of foreign banks is consistent with the findings of the Capital Equivalency Report submitted by the Board and the Department of Treasury to Congress earlier this year.

The Board recognizes that public sources of information on risk-based capital ratios may not be available for many foreign bank correspondents. As with domestic correspondents, however, the Board anticipates that in most instances the correspondent will provide the information to the banks with which it does business. As foreign banks do not necessarily prepare financial statements on a quarterly basis, as domestic banks do, the final rule would permit a bank to rely on the foreign bank correspondent's most recent financial statements.

Clarification of the Provision

Eight commenters quoted the supplementary information to the proposed rule, which stated that banks should not rely on capitalization alone and that weakness in a correspondent's management, operations, or loan portfolio might lead a bank to restrict its exposure below the permissible limits on credit exposure. These commenters pointed out that these terms are subjective and that their interpretation by the various federal bank regulators may lead to substantial and unevenly enforced compliance burdens. Two of these commenters added that it may be prohibitively expensive to judge any potential "weakness" in a correspondent and, as a result, respondents may shift their correspondent activities to the public sector. One commenter suggested that to facilitate compliance, the final rule eliminate references which cut back on what is permissible under the guidelines and leave other considerations for the prudential analysis section.

The Board continues to believe that the remaining limit on credit exposure should be viewed as a maximum level for credit exposure rather than a safe harbor. To the extent that a bank's prudential policies and procedures suggest a lower level of credit exposure to a correspondent, the bank should adhere to the lower level.

Frequency of Monitoring

Twenty-six commenters sought clarification of the frequency with which capital must be monitored and the way it must be measured. Two commenters suggested that quarterly monitoring is too frequent and another proposed that capital be monitored annually. Twenty-three commenters, nineteen of whom submitted a substantially similar letter, urged that capital be measured over a period of time, rather than at a point in time. Three commenters urged that the capitalization of a correspondent in a multibank holding company be based on the capital of the bank holding company.

Under the final rule for domestic correspondents, capital should be monitored quarterly to pick up information based on the correspondent's most recent call report, financial statement, or bank rating report. For foreign bank correspondents, monitoring frequency should be related to the frequency with which financial statements or other regular reports are available. Although such information is available quarterly for some foreign banks, for many foreign banks financial statements generally will be available only on a semi-annual basis. Further, quarterly monitoring of capital is only required for correspondents to which a bank's potential credit exposure is more than 25 percent of its own capital. If the internal systems of a bank ordinarily limit credit exposure to a correspondent to less than 25 percent of the exposed bank's capital, no monitoring of the correspondent's capital would be necessary, although periodic reviews of the correspondent's financial condition may be required under § 206.3(a)(2) if exposure to the correspondent is significant.

Six commenters expressed concerns about the timeliness of the required information. Three noted substantial delays before generally published reports become available and another noted that this information is more expensive if it is obtained before it is commercially available. Two commenters requested guidelines on the requisite freshness of this data. Because information in risk-based capital ratios is generally based on the call report, a bank would be justified in relying on the most recently available reports based on call report data. While there may be a significant lag in such data, the Board believes that where the information in such reports is followed by the bank on a continuing basis, the reports remain a useful monitor of trends in the conditions of the correspondent.

Definition of "Adequately Capitalized"

Several commenters criticized the definition of "adequately capitalized." One suggested that the definition include all banks with a leverage ratio of 4 percent or greater and a total risk based capital ratio in excess of 8 percent. One suggested it include all banks with a tier 1 ratio of at least 5 percent. Another argued that the definition of adequately capitalized is unjustifiably more restrictive than the definition in the prompt corrective action standards and suggested that the definition include correspondents with a capital ratio of 3 percent and a 1 CAMEL rating. While acknowledging that a bank cannot disclose its CAMEL rating, the commenter suggested that it could disclose if it is adequately capitalized under this standard. Another bank suggested that the leverage ratio be excluded because it is not applied to foreign banks. Commenters also addressed the definition of "well capitalized," which has been deleted. One commenter suggested that the rule be written to state clearly the capital requirements imposed upon correspondents. Another commenter supported the capital definitions.

The definition of adequately capitalized in the proposed rule was based on, but not identical to, the definition used for prompt corrective action. The difference between the definitions is to enable banks to determine, from publicly available information, a correspondent's capital for the purpose of this rule. The Board believes that it would be confusing to make further changes in this rule's definition of "adequately capitalized" and the definition in the final rule remains unchanged.

Section 206.7 Waiver [Final Rule—Section 206.6]

The proposed rule provided that the Board may waive the application of § 206.4(a) to a bank if the primary federal supervisor of the bank advises the Board that the bank is not reasonably able to obtain necessary services, including payment-related services and placement of funds, without incurring exposure to a correspondent in excess of otherwise applicable limits. The Board received three comments on this section.

Two commenters suggested that if the guidelines are not relaxed, small rural banks with seasonal cash flows should receive waivers. As noted above, the

proposed final rule would eliminate the regulatory limit on credit exposure for adequately capitalized banks, substantially easing this constraint. To the extent that seasonal cash flows require rural banks to sell federal funds or engage in other transactions in excess of 25 percent of their capital, the Board believes that they should deal with banks that are adequately capitalized or better or diversify their credit exposure.

Another commenter suggested that the Board use its waiver authority liberally when the exposure is of a length or a type that extrication within 30 days is quite difficult. The Board does not believe that this use of the waiver authority is appropriate. The waiver is designed for low capital banks that need payment services and would not be able to obtain them otherwise. Rather than liberalize the waiver provisions, the Board has extended to 120 days the transition period for compliance with the limit on credit exposure to a correspondent that is less than adequately capitalized. This extension should permit banks to reduce exposure judiciously to a bank whose capital has been reduced. Under the final rule, the waiver provision remains unchanged.

Section 206.8 Record Retention [Deleted in Final Rule]

The proposed rule required that banks establish recordkeeping reasonably designed to demonstrate compliance with the provisions of §§ 206.3 and 206.4. The Board received forty-seven letters that commented on this section specifically and one hundred eight letters that complained of excessive paperwork generally.

Concerns With Cost Burdens

All of the forty-seven comments on this section complained of the cost and burden of these requirements. A trade association pointed out that banks already confront substantial compliance and recordkeeping requirements and that the requirements in the proposed rule may exceed banks' compliance capacity and ability. Two commenters asserted that requiring documentation of every closed transaction would substantially increase compliance costs. These commenters stated that records of closed transactions generally are not retained. Rather, limits are set for specific products and maturities, and internal limits are monitored to ensure they are not exceeded without specific credit approval. The commenters proposed that rather than requiring that records of closed transactions be available for review, the final rule should focus on the adequacy of a bank's establishment and monitoring of limits, including any reported overages.

Clarification of the Requirement

Three commenters requested that the final rule articulate what documentation must be maintained on file, in what format, and for how long, both to assist banks in maintaining reasonable records and to provide examiners with guidelines to effect uniform enforcement.

Proposals of Modification

Thirty-eight commenters offered specific suggestions for reducing the burden. Two commenters suggested that the requirements should not apply to exposure covered by FDIC insurance and that the requirements should be reduced for smaller amounts of exposure regardless of the correspondent's capitalization. Another commenter suggested an exception when exposure is less than 25% of capital.

Thirty-two commenters urged a reduction in recordkeeping requirements for respondents dealing with well-capitalized banks. Thirty of them sent an identical letter urging that the recordkeeping requirement be the same for a well-capitalized bank as it is for a Federal Reserve Bank. One commenter suggested that if a respondent selects a well-capitalized correspondent the recordkeeping burden should be restricted to maintaining on file the correspondent's quarterly disclosure and certification of its capitalization.

Other commenters urged a generalized reduction in the burden. One commenter suggested that the prudential standards requirement be limited to documenting an annual review. Two commenters suggested that the capital monitoring requirement be satisfied by documentation of an annual review of capital.

One commenter urged that the requirement be eliminated altogether, proposing that examiners rely on the adequacy of the prudential policies and that the burden be on the examiners to prove a violation of the regulation rather than on banks to prove compliance.

Final Rule

The specific record retention requirement has been deleted from the final rule. Examiners will use examiner guidance to determine compliance with the rule.

Section 206.9 Transition Provisions [Final Rule—Section 206.7]

The proposed rule provided that for a period of one year beginning on December 19, 1992, a bank would be required to comply with the prudential standards required under § 206.3(a), and under § 206.3(b) would be required to structure transactions with a correspondent or monitor exposure to a correspondent to ensure that its exposure did not exceed its internal limits established under § 206.3(a). During this period, the proposed rule did not require the bank to meet the guidelines for credit exposure established under § 206.4 or monitor credit exposure under § 206.3(b).

The proposed rule further provided that for a period of one year beginning on December 19, 1993, the overall guideline for credit exposure to an adequately capitalized correspondent contained in § 206.4(b)(ii) would be 100 percent of the bank's total capital, with the guideline for credit exposure having a remaining term to maturity of more than 30 days at 50 percent of the bank's capital. The proposed rule set the interim guideline on credit exposure to an individual correspondent contained in § 206.4(a)(iii) at 50 percent of the exposed institution's total capital. This section was designed to allow banks adequate time to rearrange their correspondent banking relationship to meet the new requirements. The Board received twelve comments on this section, one of which supported the provision as written and another of which supported the idea of a transition period.

Proposed Extension of the Transition Period.

Nine commenters urged the Board to extent the initial transition period, i.e. the period before the prudential guidelines become effective, to permit banks to prepare new policies or review and revise existing policies, to establish procedures to monitor and control interbank exposures, and to restructure correspondent relationships. Two commenters suggested that the proposed implementation date would not allow bank regulatory agencies sufficient time to train examiners.

The Board believes that a longer initial transition period will enable banks that have not made credit assessments of their correspondents to do so and for banks to review and, where appropriate, improve their monitoring procedures. An extended initial transition period also will enable the Board to develop examination guidelines related to the rule. Therefore, the final rule provides for a six-month transition period before the prudential standards become effective, with the regulatory limit on credit exposure

phased in over a two year period after that date.

Competitive Analysis

The proposed rule included a competitive impact analysis discussing the effects of the proposed rule on the ability of private sector correspondent banks to compete effectively with the Federal Reserve Banks in providing similar services. The proposed rule did not limit credit exposure of a bank to Federal Reserve Banks or to "well capitalized" correspondents because such exposure would not pose a risk to the bank. However, the proposed rule did impose three substantive requirements on a bank's exposure to a well capitalized correspondent that are not imposed on a bank's exposure to a Federal Reserve Bank, requiring a bank to have internal policies and procedures to limit exposure to a well capitalized correspondent, to structure transactions or monitor exposure to ensure that exposure ordinarily remains within the internal limits established, and to obtain sufficient information to demonstrate that the correspondent is well capitalized. Additionally, for adequately-capitalized correspondents, the proposed rule required a bank to limit overall credit exposure to an amount equal to not more than 50 percent of the exposed bank's capital, and to limit credit exposure with a term to maturity of greater than thirty days to an amount equal to not more than 25 percent of the exposed bank's capital.

The analysis included with the proposed rule indicated that the rule could have a direct and material adverse effect on the ability of correspondents to compete effectively with the Federal Reserve Banks in providing payment services, particularly in the area of check collection. The analysis concluded that this adverse effect was due to the differing legal powers of the Federal Reserve Banks. In assessing whether the objective of the proposed rule, to limit the risks that the failure of a correspondent would pose to exposed banks, could be reasonably achieved with a lesser or no adverse competitive impact, the Board concluded that the structure of the proposed rule minimized any adverse competitive effects on correspondents by not imposing rigid limits on credit exposure, by permitting higher levels of credit exposure to correspondents with higher capital levels, and by excluding cash items in the process of collection from the calculation of credit exposure to a correspondent.

In light of comments received on the proposed rule, however, the Board has made a number of modifications to the final rule to reduce further any adverse competitive effect on private sector correspondents. These modifications, described in detail above, include removing the limit on credit exposure to adequately capitalized correspondents, requiring internal limits on exposure to a correspondent only where there is a significant risk that payments will not be made as contemplated, and requiring monitoring or structuring of transactions to remain within limits only where limits are required by the final rule. Additionally, the final rule affords a longer initial implementation period in order to provide banks adequate time to review existing internal policies and procedures. The Board believes that the extended implementation period, along with the other modifications to the final rule, will reduce the likelihood that a bank will conclude that it must transfer activities to a Federal Reserve Bank.

While the Board recognizes that the modifications to the final rule do not completely remove the adverse competitive effects of the rule, the Board believes that the provisions of the final rule are necessary to fulfill the statutory objectives. Additionally, the Board will consider whether modifications should be made to the private-sector adjustment factor (PSAF) used to calculate the prices of Reserve Bank services to address disparities in capital ratios between the Reserve Banks and private correspondents resulting from the rule.

Regulatory Flexibility Analysis

Pursuant to section 603 of the Regulatory Flexibility Act (Pub. L. 96–354, U.S.C. 601 *et seq.*), the Board published for comment an initial regulatory flexibility analysis analyzing the provisions of its proposed Regulation F. Section 604 of the Regulatory Flexibility Act requires the Board to publish a final regulatory flexibility analysis with the final rule containing: (1) A statement of the need for, and objectives of, the rule; (2) a summary of the issues raised by the public comment in response to the initial regulatory flexibility statement, a summary of the assessment of such comments, and a statement of changes made in the proposed rule in response to comments; (3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities, and a statement of why these alternatives were rejected.

Each of these items are discussed in detail in the Supplementary Information above. The Board believes that the modifications included in the final rule significantly reduce the recordkeeping and regulatory burden imposed by the rule. The final rule places greater emphasis on the general internal policies and procedures of the bank, and does not require internal limits for all exposure to correspondents. The proposed rule also had been clarified to reduce the burden of monitoring such exposure. Additionally, the limit on credit exposure to adequately capitalized correspondents has been removed, significantly reducing the regulatory burden on banks in complying with the rule. This change lessens the probability that a bank will be required to diversify its exposure to a correspondent as a result of the rule, and eliminates the need for banks to monitor credit exposure to an adequately capitalized correspondent. Although a bank will continue to be required to monitor the capital levels of correspondents to which it has significant exposure, the final rule clarifies that a bank may rely on information obtained from its bank holding company, correspondent, or other party, significantly reducing the burden of obtaining the information.

Notice of Final Rule

A final rule is generally required to be published at least thirty days prior to its effective date. 5 U.S.C. 553(d). An exception is provided, however, where the agency has found good cause and provided the basis for the finding in the publication of the rule. 5 U.S.C. 553(d)(3). The final rule has been made effective as of December 19, 1992, in order to comply with the requirements of section 308 of FDICIA, which becomes effective on December 19, 1992. Further, although less than thirty days' notice has been provided before the effective date of the final rule, the rule contains transition provisions for actual compliance with the provisions of the regulation. Depository institutions covered by the rule will have six months after the effective date before actual compliance with any of the provisions of the rule is required. The Board therefore finds that there is good cause for the final rule to be made effective with less than a thirty-day notice period.

List of Subjects in 12 CFR Part 206

Banks, Banking, Interbank liability, Lending limits, Savings associations.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 23 of the Federal Reserve Act, 12 U.S.C. 371b–2, the Board is adding 12 CFR Part 206 to read as follows:

PART 206—LIMITATIONS ON INTERBANK LIABILITIES

Sec.
206.1 Authority, purpose, and scope.
206.2 Definitions.
206.3 Prudential standards.
206.4 Credit exposure.
206.5 Capital levels of correspondents.
206.6 Waiver.
206.7 Transition provisions.

Authority: Section 308 of Public Law 102-242, 105 Stat. 2236, 12 U.S.C. 371b-2.

§ 206.1 Authority, purpose, and scope.

(a) *Authority and purpose.* This part (Regulation F, 12 CFR part 206) is issued by the Board of Governors of the Federal Reserve System (Board) to implement section 308 of the Federal Deposit Insurance Corporation Improvements Act of 1991 (Act), 12 U.S.C. 371b-2. The purpose of this part is to limit the risks that the failure of a depository institution would pose to insured depository institutions.

(b) *Scope.* This part applies to all depository institutions insured by the Federal Deposit Insurance Corporation.

§ 206.2 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Bank* means an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and includes an insured national bank, state bank, District bank, or savings association, and an insured branch of a foreign bank.

(b) *Commonly-controlled correspondent* means a correspondent that is commonly controlled with the bank and for which the bank is subject to liability under section 5(e) of the Federal Deposit Insurance Act. A correspondent is considered to be commonly controlled with the bank if:

(1) 25 percent or more of any class of voting securities of the bank and the correspondent are owned, directly or indirectly, by the same depository institution or company; or

(2) Either the bank or the correspondent owns 25 percent or more of any class of voting securities of the other.

(c) *Correspondent* means a U.S. depository institution or a foreign bank, as defined in this part, to which a bank has exposure, but does not include a commonly controlled correspondent.

(d) *Exposure* means the potential that an obligation will not be paid in a timely manner or in full. "Exposure" includes credit and liquidity risks, including operational risks, related to intraday and interday transactions.

(e) *Foreign bank* means an institution that: (1) Is organized under the laws of a country other than the United States;

(2) Engages in the business of banking;

(3) Is recognized as a bank by the bank supervisory or monetary authorities of the country of the bank's organization;

(4) Receives deposits to a substantial extent in the regular course of business; and

(5) Has the power to accept demand deposits.

(f) *Primary federal supervisor* has the same meaning as the term "appropriate Federal banking agency" in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(g) *Total capital* means the total of a bank's Tier 1 and Tier 2 capital under the risk-based capital guidelines provided by the bank's primary federal supervisor. For an insured branch of a foreign bank organized under the laws of a country that subscribes to the principles of the Basle Capital Accord, "total capital" means total Tier 1 and Tier 2 capital as calculated under the standards of that country. For an insured branch of a foreign bank organized under the laws of a country that does not subscribe to the principles of the Basle Capital Accord, "total capital" means total Tier 1 and Tier 2 capital as calculated under the provisions of the Accord.

(h) *U.S. depository institution* means a bank, as defined in § 206.2(a) of this part, other than an insured branch of a foreign bank.

§ 206.3 Prudential standards.

(a) *General.* A bank shall establish and maintain written policies and procedures to prevent excessive exposure to any individual correspondent in relation to the condition of the correspondent.

(b) *Standards for selecting correspondents.* (1) A bank shall establish policies and procedures that take into account credit and liquidity risks, including operational risks, in selecting correspondents and terminating those relationships.

(2) Where exposure to a correspondent is significant, the policies and procedures shall require periodic reviews of the financial condition of the correspondent and shall take into account any deterioration in the correspondent's financial condition. Factors bearing on the financial condition of the correspondent include the capital level of the correspondent, level of nonaccrual and past due loans and leases, level of earnings, and other factors affecting the financial condition of the correspondent. Where public information on the financial condition of the correspondent is available, a bank may base its review of the financial condition of a correspondent on such information, and is not required to obtain non-public information for its review. However, for those foreign banks for which there is no public source of financial information, a bank will be required to obtain information for its review.

(3) A bank may rely on another party, such as a bank rating agency or the bank's holding company, to assess the financial condition of or select a correspondent, provided that the bank's board of directors has reviewed and approved the general assessment or selection criteria used by that party.

(c) *Internal limits on exposure.* (1) Where the financial condition of the correspondent and the form of maturity of the exposure create a significant risk that payments will not be made in full or in a timely manner, a bank's policies and procedures shall limit the bank's exposure to the correspondent, either by the establishment of internal limits or by other means. Limits shall be consistent with the risk undertaken, considering the financial condition and the form and maturity of exposure to the correspondent. Limits may be fixed as to amount of flexible, based on such factors as the monitoring of exposure and the financial condition of the correspondent. Different limits may be set for different forms of exposure, different products, and different maturities.

(2) A bank shall structure transactions with a correspondent or monitor exposure to a correspondent, directly or through another party, to ensure that its exposure ordinarily does not exceed the bank's internal limits, including limits established for credit exposure, except for occasional excesses resulting from unusual market disturbances, market movements favorable to the bank, increases in activity, operational problems, or other unusual circumstances. Generally, monitoring may be done on a retrospective basis. The level of monitoring required depends on:

(i) The extent to which exposure approaches the bank's internal limits;

(ii) The volatility of the exposure; and

(iii) The financial condition of the correspondent.

(3) A bank shall establish appropriate procedures to address excesses over its internal limits.

(d) *Review by board of directors.* The policies and procedures established under this section shall be reviewed and approved by the bank's board of directors at least annually.

§ 206.4 Credit exposure.

(a) *Limits on credit exposure.* (1) The policies and procedures on exposure established by a bank under § 206.3(c) of this part shall limit a bank's interday credit exposure to an individual correspondent to not more than 25 percent of the bank's total capital, unless the bank can demonstrate that its correspondent is at least adequately capitalized, as defined in § 206.5(a) of this part.

(2) Where a bank is no longer able to demonstrate that a correspondent is at least adequately capitalized for the purposes of § 206.4(a) of this part, including where the bank cannot obtain adequate information concerning the capital ratios of the correspondent, the bank shall reduce its credit exposure to comply with the requirements of § 206.4(a)(1) of this part within 120 days after the date when the current Report of Condition and Income or other relevant report normally would be available.

(b) *Calculation of credit exposure.* Except as provided in §§ 206.4 (c) and (d) of this part, the credit exposure of a bank to a correspondent shall consist of the bank's assets and off-balance sheet items that are subject to capital requirements under the capital adequacy guidelines of the bank's primary federal supervisor, and that involve claims on the correspondent or capital instruments issued by the correspondent. For this purpose, off-balance sheet items shall be valued on the basis of current exposure. The term "credit exposure" does not include exposure related to the settlement of transactions, intraday exposure, transactions in an agency or similar capacity where losses will be passed back to the principal of other party, or other sources of exposure that are not covered by the capital adequacy guidelines.

(c) *Netting.* Transactions covered by netting agreements that are valid and enforceable under all applicable laws may be netted in calculating credit exposure.

(d) *Exclusions.* A bank may exclude the following from the calculation of credit exposure to a correspondent:

(1) Transactions, including reverse repurchase agreements, to the extent that the transactions are secured by government securities or readily marketable collateral, as defined in paragraph (f) of this section, based on the current market value of the collateral;

(2) The proceeds of checks and other cash items deposited in an account at a correspondent that are not yet available for withdrawal;

(3) Quality assets, as defined in paragraph (f) of this section, on which the correspondent is secondarily liable, or obligations of the correspondent on which a creditworthy obligor in addition to the correspondent is available, including but not limited to:

(i) Loans to third parties secured by stock or debt obligations of the correspondent;

(ii) Loans to third parties purchased from the correspondent with recourse;

(iii) Loans or obligations of third parties backed by stand-by letters of credit issued by the correspondent; or

(iv) Obligations of the correspondent backed by stand-by letters of credit issued by a creditworthy third party;

(4) exposure that results from the merger with or acquisition of another bank for one year after that merger or acquisition is consummated; and

(5) The portion of the bank's exposure to the correspondent that is covered by federal deposit insurance.

(e) *Credit exposure of subsidiaries.* In calculating credit exposure to a correspondent under this part, a bank shall include credit exposure to the correspondent of any entity that the bank is required to consolidate on its Report of Condition and Income or Thrift Financial Report.

(f) *Definitions.* As used in this section:

(1) *Government securities* means obligations of, or obligations fully guaranteed as to principal and interest by, the United States government or any department, agency, bureau, board, commission, or establishment of the United States, or any corporation wholly owned, directly or indirectly, by the United States.

(2) *Readily marketable collateral* means financial instruments or bullion that may be sold in ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or a similarly available daily bid- ask-price market.

(3)(i) *Quality asset* means an asset:

(A) That is not in a nonaccrual status;

(B) On which principal or interest is not more than thirty days past due; and

(C) Whose terms have not been renegotiated or compromised due to the deteriorating financial conditions of the additional obligor.

(ii) An asset is not considered a "quality asset" if any other loans to the primary obligor on the asset have been classified as "substandard," "doubtful," or "loss," or treated as "other loans specially mentioned" in the most recent report of examination or inspection of the bank or an affiliate prepared by either a federal or a state supervisory agency.

§ 206.5 Capital levels of correspondents.

(a) *Adequately capitalized correspondents.*[1] For the purpose of this part, a correspondent is considered adequately capitalized if the correspondent has:

(1) A total risk-based capital ratio, as defined in paragraph (e)(1) of this section, of 8.0 percent or greater;

(2) A Tier 1 risk-based capital ratio, as defined in paragraph (e)(2) of this section, of 4.0 percent or greater; and

(3) A leverage ratio, as defined in paragraph (e)(3) of this section, of 4.0 percent or greater.

(b) *Frequency of monitoring capital levels.* A bank shall obtain information to demonstrate that a correspondent is at least adequately capitalized on a quarterly basis, either from the most recently available Report of Condition and Income, Thrift Financial Report, financial statement, or bank rating report for the correspondent. For a foreign bank correspondent for which quarterly financial statements or reports are not available, a bank shall obtain such information on as frequent a basis as such information is available. Information obtained directly from a correspondent for the purpose of this section should be based on the most recently available Report of Condition and Income, Thrift Financial Report, or financial statement of the correspondent.

(c) *Foreign banks.* A correspondent that is a foreign bank may be considered adequately capitalized under this section without regard to the minimum leverage ratio required under paragraph (a)(3) of this section.

(d) *Reliance on information.* A bank may rely on information as to the capital levels of a correspondent obtained from the correspondent, a bank rating agency, or other party that it reasonably believes to be accurate.

(e) *Definitions.* For the purposes of this section:

(1) *Total risk-based capital ratio* means the ratio of qualifying total capital to weighted risk assets.

(2) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to weighted risk assets.

(3) *Leverage ratio* means the ratio of Tier 1 capital to average total consolidated assets, as calculated in accordance with the capital adequacy

[1] As used in this part, the term "adequately capitalized" is similar but not identical to the definition of that term as used for the purposes of the prompt corrective action standards. See, *e.g.* 12 CFR part 208, subpart B.

guidelines of the correspondent's primary federal supervisor.

(f) *Calculation of capital ratios.* (i) For a correspondent that is a U.S. depository institution, the ratios shall be calculated in accordance with the capital adequacy guidelines of the correspondent's primary federal supervisor.

(ii) For a correspondent that is a foreign bank organized in a country that has adopted the risk-based framework of the Basle Capital Accord, the ratios shall be calculated in accordance with the capital adequacy guidelines of the appropriate supervisory authority of the country in which the correspondent is chartered.

(iii) For a correspondent that is a foreign bank organized in a country that has not adopted the risk-based framework of the Basle Capital Accord, the ratios shall be calculated in accordance with the provisions of the Basle Capital Accord.

§ 206.6 Waiver.

The Board may waive the application of § 206.4(a) of this part to a bank if the primary Federal supervisor of the bank advises the Board that the bank is not reasonably able to obtain necessary services, including payment-related services and placement of funds, without incurring exposure to a correspondent in excess of the otherwise applicable limit.

§ 206.7 Transition provisions.

(a) Beginning on June 19, 1993, a bank shall comply with the prudential standards prescribed under § 206.3 of this part.

(b) Beginning on June 19, 1994, a bank shall comply with the limit on credit exposure to an individual correspondent required under § 206.4(a) of this part, but for a period of one year after this date the limit shall be 50 percent of the bank's total capital.

By order of the Board of Governors of the Federal Reserve System, December 11, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-30587 Filed 12-17-92; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 625

RIN 3052-AB11

Application for Award of Fees and Other Expenses Under the Equal Access to Justice Act

AGENCY: Farm Credit Administration (FCA).

ACTION: Final rule.

SUMMARY: The FCA issues regulations to implement the Equal Access to Justice Act (EAJA). In accordance with the EAJA, the regulations establish conditions under which parties who prevail over the FCA in certain administrative proceedings may be awarded attorney fees and other expenses.

EFFECTIVE DATE: The regulation shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

William L. Larsen, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444

or

Richard A. Cohn, Senior Attorney, Administrative Law and Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 833-4444.

SUPPLEMENTARY INFORMATION: On August 5, 1985, Congress enacted Public Law 99-80, 99 Stat. 183, which reauthorized and amended the Equal Access to Justice Act, 5 U.S.C. 504. The EAJA provides for the award of attorney fees and other expenses to parties who prevail over Federal agencies in certain administrative proceedings. The EAJA requires Federal agencies, after consultation with the Chairman of the Administrative Conference of the United States (ACUS), to establish uniform procedures for the submission and consideration of applications for fee and expenses awards.

On July 16, 1992, after consultation with ACUS, the FCA proposed rules implementing the EAJA. (57 FR 31463). The FCA received two comment letters in response to its EAJA implementation proposal. The Farm Credit Council (FCC) raised five issues in its letter, with which the Farm Credit Bank of Baltimore concurred generally.

The final rules are in large part the same as the proposed rules, which followed generally the ACUS Model Rules For Implementation of the Equal Access to Justice Act in Agency Proceedings, 1 CFR part 315 (model rules). The FCA has adopted several changes in the rules as proposed, based on its further consideration of the EAJA and ACUS model rules and in response to public comments. Discussion of these changes follows.

Analysis of Changes by Subpart

Subpart A—General Provisions

Section 625.2(d) is amended to further clarify that references in the regulations to the "presiding officer" may also apply to the FCA Board (Board) where the Board conducts proceedings under the EAJA.

As noted in the rule proposal, these EAJA implementation regulations do not apply to judicial awards of costs and fees in civil actions. See 28 U.S.C. 2412. Nevertheless, the FCC suggested that the regulations would be clearer if reference were made to fee awards in the context of court review of the underlying adversary adjudication. Therefore, the FCA has added a new § 625.2(e) stating the statutory requirement of 5 U.S.C. 504(c)(1) that an award for fees in connection with a court review of an underlying adversary adjudication may be made only pursuant to 28 U.S.C. 2412(d)(3).

To clarify that the regulations are consistent with the EAJA, § 625.5(b) is amended to substitute the language of the EAJA regarding compensation of expert witnesses.

Section 625.5(c) is amended to change the reference from "FCA" to the "presiding officer." This change responds to a comment from the FCC noting an apparent inconsistency with other provisions of the proposed regulations. It is also in accord with the intent of the clarifying amendment to § 625.2(d) regarding the Board's authority to preside over EAJA proceedings.

The EAJA limits attorney or agent fees to a maximum of $75 per hour unless the agency determines by regulation that a higher fee is justified by an increase in the cost of living or by special circumstances. The FCA did not propose to establish a specific regulatory procedure through which the public could petition the FCA to raise the ceiling on EAJA attorney or agent fee awards because it would seem to restate current law. The Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, already grants interested parties the right to petition an agency to change its rules and the EAJA clearly authorizes FCA rulemaking on a higher rate ceiling. As the FCC commented, however, the ACUS model rules contain a separate provision (1 CFR 315.107) covering agency rulemaking on maximum rates for attorney fees that establishes the procedure for such rulemaking. The FCC suggested that the FCA add the ACUS model provision in the interest of completeness and clarity. While it is not bound to adopt the ACUS model rules, the FCA agrees that the addition of the

ACUS model provision on maximum rate rulemaking may be helpful in illuminating this aspect of the EAJA. The FCA believes the 60-day timetable established by the ACUS model rule provision may be impractical depending on the rulemaking workload of the agency. Therefore, the FCA is setting the deadline for action on a petition at 90 days. The new provision appears as § 625.6.

Subpart C—Procedures for Considering Applications

Section 625.22 provides for the FCA counsel's answer to the application for fees. The FCC suggested in its comments that this provision be revised along lines similar to the ACUS model rules to treat a failure to file an answer to an application within 30 days "as a consent to the award requested." 1 CFR 315.302(a). While the FCA has no objection to the time constraint on an agency answer to an EAJA application, it does not agree that failure to answer an application within 30 days should result in a default award of fees without a further showing that the application is meritorious. Accordingly, the FCA is amending § 625.22(a) to include language similar to § 315.302(a) of the ACUS model rules, but modified to require the applicant to make a satisfactory showing of entitlement to an EAJA fee award before such an award could be granted by the presiding officer.

The FCC comment letter also suggested that the FCA include in its EAJA rules a provision similar to ACUS model rule § 315.304, which permits any party to a proceeding other than the applicant and agency counsel to file timely comments on an application or answer. The FCA viewed this model rule provision as having little practical applicability to its adjudications, and thus did not include it in the proposed rules. Recognizing, however, that there might be limited circumstances of applicability, the FAC is now adding new § 625.24, which is based on ACUS model rule § 315.304.

List of Subjects in 12 CFR Part 625

Application, Attorney fees, Delegation, Equal Access to Justice Act, Organization and functions, and Procedures.

For the reasons stated in the preamble, part 625 is added to chapter VI of title 12 of the Code of Federal Regulations to read as follows:

PART 625—APPLICATION FOR AWARD OF FEES AND OTHER EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

Sec.
625.1 Purpose.
625.2 Proceedings covered.
625.3 Eligibility of applicants.
625.4 Standards for awards.
625.5 Allowable fees and expenses.
625.6 Rulemaking on maximum rates for attorney fees.
625.7 Awards against other agencies

Subpart B—Applicant Information Required

625.10 Contents of application.
625.11 Net worth exhibit.
625.12 Documentation of fees and expenses.
625.13 When an application may be filed.

Subpart C—Procedures for Considering Applications

625.20 Settlement.
625.21 Filing and service of documents.
625.22 Answer to application.
625.23 Reply.
625.24 Comments by other parties.
625.25 Further proceedings.
625.26 Recommended decision.
625.27 Board decision.
625.28 Judicial review.
625.29 Payment of award.

Authority: 5 U.S.C. 504, 12 U.S.C. 2252.

Subpart A—General Provisions

§ 625.1 Purpose.

These rules implement the Equal Access to Justice Act, 5 U.S.C. 504 (EAJA). The EAJA provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (designated by the EAJA as "adversary adjudications") before Federal agencies. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. The rules in this part explain how the EAJA applies to Farm Credit Administration (FCA) proceedings. The rules describe the parties eligible for awards, how such parties may apply for awards, and the procedures and standards that govern FCA consideration of applications.

§ 625.2 Proceedings covered.

(a) The EAJA applies to adversary adjudications conducted by the FCA either on its own behalf or in connection with any other agency of the United States that participates in or in any way is a part of the adversary adjudication. Adversary adjudications are:

(1) Adjudications under 5 U.S.C. 554 in which the position of the FCA or other agency is presented by an attorney or other representative who enters an appearance and participates in the proceeding; and

(2) Enforcement proceedings under 12 U.S.C. 2261–2273.

(b) The failure of the FCA to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes that the proceeding is covered by the EAJA; whether the proceeding is covered shall then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered and excluded from coverage by the EAJA, any award made will include only fees and expenses related to covered issues.

(d) Proceedings under this part may be conducted by the FCA Board (Board) or by the presiding officer (referred to as the "adjudicative officer" in the EAJA), as defined in § 622.2(f) of this chapter. If the Board conducts proceedings, reference to the "presiding officer" in this part shall mean the Board, in applicable context. Where the Board presides, the recommended decision under § 625.26 of this part will be omitted and the Board will make a final decision on the application in accordance with § 625.27 of this part.

(e) If a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to 28 U.S.C. 2412(d)(3).

§ 625.3 Eligibility of applicants.

(a) To be eligible for an award under the EAJA, an applicant must be a prevailing party named or admitted to the adversary adjudication for which an award is sought. The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B of this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of $2 million or less;

(2) The sole owner of an unincorporated business who has both a net worth of $7 million or less (including personal and business interests), and 500 or fewer employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with 500 or fewer employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of $7 million or less and 500 or fewer employees.

(c) For eligibility purposes, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for that applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility unless the presiding officer determines that aggregation would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities.

(1) For purposes of this part, an affiliate is:

(i) Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant; or

(ii) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interests.

(2) The presiding officer may determine that financial relationships of the applicant other than those described in paragraph (f)(1) of this section constitute special circumstances that would make an award unjust.

(g) An applicant that participates in an adversary adjudication primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 625.4 Standards for awards.

(a) If an eligible applicant prevails over the FCA in an adversary adjudication, or in a significant and discrete substantive portion thereof, the applicant may receive an award for fees and expenses incurred in the adjudication, or portion thereof, unless the position of the FCA over which the applicant prevailed was substantially justified.

(b) The position of the FCA includes:

(1) The position taken by the FCA in the adversary adjudication; and

(2) The action or inaction of the FCA upon which the adversary adjudication is based.

(c) Except as provided in paragraph (d) of this section, the FCA must prove that its position was substantially justified before an award may be denied to an otherwise eligible applicant.

(d) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the adversary adjudication or if special circumstances make the award sought unjust.

§ 625.5 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the FCA pays expert witnesses. However, an award also may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the presiding officer shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, audit, engineering report, test, project, or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for the preparation of the applicant's case.

§ 625.6 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the FCA may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some or all of the types of proceedings covered by this part. The FCA will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the FCA a petition for rulemaking to increase the maximum rate for attorney fees. The petition should identify the rate the petitioner believes the FCA should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The FCA will respond to the petition within 90 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 625.7 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in or in any way is a part of an adversary adjudication before the FCA and that agency's position is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Subpart B—Applicant Information Required

§ 625.10 Contents of application.

(a) An application for an award of fees and other expenses under the EAJA shall identify the applicant and the adversary adjudication for which an award is sought. The application shall show that the applicant has prevailed in the adversary adjudication. If the application is made on the basis of significant and discrete substantive issues on which the applicant prevailed, the issues must be specifically identified. The application also shall identify each position of the FCA or other agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall describe briefly the type and purpose of its organization or business and state the number of persons employed.

(b) The application shall include a statement that the applicant's net worth does not exceed $2 million (if an

individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It states that it has 500 employees or fewer and attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees.

(c) The application shall state the total amount of fees and other expenses for which an award is sought.

(d) The application may include any other relevant matters that the applicant wishes the FCA to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. The application must contain a written verification under oath or under penalty of perjury that the information provided in the application and any supporting documents is accurate.

§ 625.11 Net worth exhibit.

(a) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 625.3(f)(1) of this part) as of the date when the adversary adjudication was initiated. The exhibit may be in any convenient form that provides full disclosure of the assets and liabilities of the applicant and its affiliates and is otherwise sufficient to demonstrate that the applicant qualifies under the standards in this part. The presiding officer may require an applicant to file additional information supporting its eligibility for an award.

(b) An applicant that objects to public disclosure of information in any portion of the net worth exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the presiding officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion under § 622.11 of this chapter to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the FCA, but need not be served on any other party to the application proceeding. If the presiding officer, or the FCA Board pursuant to § 622.11(e) of this chapter, finds that the information should not be withheld from disclosure, it shall be placed in the public record of the application proceeding. Otherwise, any request to inspect or copy the exhibit shall be treated in accordance with the FCA's procedures regarding release of information (12 CFR part 602).

§ 625.12 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, audit, engineering report, test, project, or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. Under § 625.25 of this part, the presiding officer may require the applicant to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed.

§ 625.13 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the adversary adjudication, or in a significant and discrete substantive portion thereof, but in no case later than 30 days after the FCA's final disposition of the adversary adjudication.

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the adversary adjudication is issued or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, becomes final and is unreviewable by the FCA, any other administrative body, or the courts.

(c) If review, reconsideration, or appeal is sought or taken of an adversary adjudication decision as to which an applicant believes it has prevailed, application proceedings for any award of fees and other expenses shall be stayed pending final disposition of the underlying controversy.

Subpart C—Procedures for Considering Applications

§ 625.20 Settlement.

A prevailing party and the FCA through its counsel may agree on a proposed settlement of an award at any time, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If a prevailing party and the FCA counsel agree on a proposed settlement of an award, the proposed settlement must be submitted to the presiding officer for a recommended decision pursuant to § 625.26 of this part. If it has not been previously filed, the application must be submitted to the presiding officer along with the proposed settlement.

§ 625.21 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the adversary adjudication in the same manner as other pleadings in the adversary adjudication (*see* §§ 622.18 and 622.19 of this chapter), except as provided in § 625.11(b) of this part for confidential financial information.

§ 625.22 Answer to application.

(a) Within 30 days after service, counsel for the FCA may file an answer to the application. Unless the FCA counsel requests an extension of time for filing or a statement of intent to negotiate under paragraph (c) of this section is filed, the presiding officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's fees and other expenses under the EAJA.

(b) The answer shall set forth any objections to the requested award and identify the facts relied on in support of the FCA's position. If the answer is based on any alleged facts not already in the record of the adversary adjudication, the FCA counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 625.25 of this part.

(c) If the FCA counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to

negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by the FCA counsel and the applicant.

§ 625.23 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 625.25 of this part.

§ 625.24 Comments by other parties.

Any party to a proceeding other than the applicant and FCA counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the presiding officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 625.25 Further proceedings.

(a) The determination of an award shall be made on the basis of the written record unless the presiding officer finds that further proceedings are necessary for full and fair resolution of the issues arising from the application. Such further proceedings may be at the request of either the applicant or the FCA counsel, or on the presiding officer's own initiative, and shall be conducted as promptly as possible. Further proceedings may include an informal conference, oral argument, additional written submissions, or other actions required by the presiding officer, but may not include discovery or an evidentiary hearing with respect to the issue of whether the agency's position was substantially justified.

(b) Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(c) A request that the presiding officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 625.26 Recommended decision.

The presiding officer shall file a recommended decision within 30 days after completion of proceedings on the application, and, promptly upon filing, shall serve a copy of the recommended decision upon each party to the proceedings. The decision shall include written findings and conclusions on the applicant's eligibility, status as a prevailing party, the recommended amount of the award, if any, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the FCA's position was substantially justified, whether the applicant unduly protracted the adversary adjudication, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 625.27 Board decision.

Following filing of the recommended decision with the Board, the Board shall render a final decision on the application. The Board maintains full discretion to uphold, reverse, remand, or alter the recommended decision. The Board may order further proceedings (including those set forth in §§ 622.11 and 622.13 through 622.16 of this chapter) upon request by any party to the application proceeding or on its own initiative, but such proceedings may not include discovery or an evidentiary hearing with respect to the issue of whether the agency's position was substantially justified.

§ 625.28 Judicial review.

Judicial review of final FCA decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 625.29 Payment of award.

(a) An applicant seeking payment of an award shall submit to the Secretary to the Board a copy of the final decision granting the award, accompanied by a certification that the applicant will not seek judicial review of the decision. The required submission and certification should be sent to: Secretary to the Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

(b) The FCA will pay the amount awarded to the applicant within 60 days of receipt of the applicant's submission and certification.

Dated: December 10, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–30617 Filed 12–17–92; 8:45 am]

BILLING CODE 6705–01–M

FARM CREDIT SYSTEM ASSISTANCE BOARD

12 CFR Chapter XIII

Removal of Regulations

AGENCY: Farm Credit System Assistance Board.

ACTION: Final rule.

SUMMARY: The Farm Credit System Assistance Board (Assistance Board) was established by the Agricultural Credit Act of 1987 as a temporary agency, which terminates on December 31, 1992. All agency program activities officially end on that date. Accordingly, it is the purpose of this action to deactivate the Assistance Board's regulations and to remove such regulations from the Code of Federal Regulations.

EFFECTIVE DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: For information before or on December 31, 1992, contact Isabella W. Sammons, General Counsel, or Christine C. Dion, Senior Attorney, (202) 737–9255.

SUPPLEMENTARY INFORMATION:

Classification

This is not a major rule under E.O. 12291 since it has no effect on costs, prices or economic competition.

Public Comment

Pursuant to 12 U.S.C. 2278a–10, the Assistance Board is not required to follow the requirements of the Administrative Procedure Act (APA) with respect to notice and comment on rulemaking. Furthermore, this removal of regulations is issued as a final rule without opportunity for public comment in the sole interest of informing the public. It does not impose any new requirements on any individuals or organizations involved in the Assistance Board's program activities.

Statutory Authority

This removal of regulations is issued under the authority Public Law 92–181, title VI, § 6.10, as added by Public Law 100–233, title II, section 201, Jan. 6, 1988, 101 Stat. 1594.

Paperwork Reduction Act

There is no information collection requirement in this action.

List of Subjects in 12 CFR Part 1300

Freedom of information, and Privacy.

Removal of Regulations

CHAPTER XIII—[REMOVED]

PART 1300—[REMOVED]

Accordingly, under the authority of § 6.10 of title VI of Public Law 92–181, as amended, part 1300 of title 12 of the Code of Federal Regulations is removed and chapter XIII of title 12 of the Code of Federal Regulations is vacated, effective December 31, 1992.

Kenneth L. Peoples,

President and Chief Executive Officer.

[FR Doc. 92–30674 Filed 12–17–92; 8:45 am]

BILLING CODE 3410-PG-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–147–AD; Amendment 39–8434; AD 92–27–01]

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 and ATR72 series airplanes, that requires a one-time general visual inspection of certain door linings and door posts to determine the date of manufacture, and replacement, if necessary. This amendment is prompted by results of inspections that have revealed that the fire resistance of certain painted door linings may be inadequate. The actions specified by this AD are intended to prevent increased risk of injury to the passengers and crew members in the event of a fire within the airplane cabin.

DATES: Effective January 22, 1993.

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

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR42 and ATR72 series airplanes was published in the **Federal Register** on September 24, 1992 (57 FR 44138). That action proposed to require a one-time general visual inspection of certain door linings and door posts to determine the date of manufacture, and replacement, if necessary.

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

One commenter supports the proposed rule.

Another commenter requests that the proposed rule be revised to make the requirements consistent with the procedures contained in the applicable service bulletins for each model. The commenter notes that, as proposed in the notice, the rule would require that the door linings as well as the door posts be removed on both the Model ATR42 and Model ATR72 prior to performing the general visual inspection to determine the date of manufacture. However, as described in the applicable service bulletin, only the door linings (not the door posts) need to be removed from the Model ATR42. The requirement to remove both the door posts and the door linings should apply only to the Model ATR72. The FAA concurs with the commenter and has revised the final rule to make this distinction in the requirements.

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 rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 99 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,445, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92–27–01. Aerospatiale: Amendment 39–8434. Docket 92–NM–147–AD.

Applicability: All Model ATR42 and ATR72 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent increased risk of injury to the passengers and crew members in the event of a fire within the airplane cabin, accomplish the following:

(a) For Model ATR42 series airplanes: Within 2 years after the effective date of this

AD, remove the door linings and perform a general visual inspection to determine the date of their manufacture, in accordance with Aerospatiale Service Bulletin ATR42-25-0084, dated April 10, 1992.

(1) If the door linings were manufactured prior to January 15, 1990, prior to further flight, replace them with linings manufactured after January 15, 1990, in accordance with Aerospatiale Service Bulletin ATR42-25-0075, dated September 4, 1991.

(2) If the door linings were manufactured on or after January 15, 1990, reinstall the linings. No further action is required by this AD.

(b) For Model ATR72 series airplanes: Within 2 years after the effective date of this AD, remove the door linings and door posts and perform a general visual inspection to determine the date of their manufacture, in accordance with Aerospatiale Service Bulletin ATR72-25-1025, Revision 1, dated May 18, 1992.

(1) If the door linings or door posts were manufactured prior to January 15, 1990, prior to further flight, replace them with linings or posts manufactured after January 15, 1990, in accordance with ATR72-25-1020, dated September 4, 1991.

(2) If the door linings or door posts were manufactured on or after January 15, 1990, reinstall the linings or posts. No further action is required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(e) The inspections and replacements shall be done in accordance with Aerospatiale Service Bulletin ATR42-25-0084, dated April 10, 1992; Aerospatiale Service Bulletin ATR42-25-0075, dated September 4, 1991; Aerospatiale Service Bulletin ATR72-25-1025, Revision 1, dated May 18, 1992; or Aerospatiale Service Bulletin ATR72-25-1020, dated September 4, 1991; as applicable. Aerospatiale Service Bulletin ATR72-25-1025, Revision 1, dated May 18, 1992, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	May 18, 1992.
2-9	Original	Apr. 10, 1992.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 22, 1993.

Issued in Renton, Washington, on December 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-30714 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-33-M

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14 CFR Part 39

[Docket No. 92-NM-158-AD; Amendment 39-8436; AD 92-27-03]

Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-7 series airplanes, that requires an inspection to determine whether rivets securing the upper longeron in each inner nacelle are installed, and modification of the upper longerons, if necessary. This amendment is prompted by reports that four rivets securing the upper longeron in each engine inner nacelle may have been omitted inadvertently during production. The actions specified by this AD are intended to prevent reduced structural integrity of the engine nacelles.

DATES: Effective January 22, 1993.

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

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, Aerospace Engineer, Airframe Branch, ANE-172, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6220; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federa. Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-7 series airplanes was published in the **Federal Register** on September 29, 1992 (57 FR 44710). That action proposed to require an inspection to determine whether rivets securing the upper longeron in each inner nacelle are installed, and modification of the upper longerons, if necessary.

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

Both commenters support the proposed rule.

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 rule as proposed.

The FAA estimates that 4 de Havilland Model DHC-7 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost of parts will be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-27-03. De Havilland, Inc.: Amendment 39-8436. Docket 92-NM-158-AD.

Applicability: Model DHC-7 series airplanes; serial numbers 1 through 7, inclusive, and 9, 10, and 11; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the engine nacelles, accomplish the following:

(a) Within 6 months after the effective date of this AD, conduct an inspection to determine whether rivets that secure the upper longerons in each inner engine nacelle have been installed, in accordance with de Havilland Service Bulletin 7-54-9, dated February 29, 1980.

(1) If any rivets are missing, prior to further flight, accomplish Modification No. 7/1707, in accordance with the service bulletin.

(2) If all rivets are detected, no further action is required by this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

(d) The inspection and modification shall be done in accordance with de Havilland Service Bulletin 7-54-9, dated February 29, 1980. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

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

Issued in Renton, Washington, on December 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-30713 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-110-AD; Amendment 39-8440; AD 92-27-06]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-8 series airplanes, that requires visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly and replacement of the assembly, if necessary. This amendment is prompted by several occurrences of failure of the rudder pedals adjuster hub assembly due to broken detent lugs. The actions specified by this AD are intended to prevent loss of rudder pedals control and reduction of braking capability.

DATES: Effective January 22, 1993.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-122L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5325; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-8 series airplanes was published in the **Federal Register** on June 18, 1992 (57 FR 27200). That action proposed to require visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly and replacement of the assembly, if necessary.

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

Both commenters support the proposed rule.

Since issuance of the notice, however, the manufacturer has advised the FAA that it does not have an adequate supply of parts so that replacement, if necessary, can be accomplished on the U.S. fleet within the proposed compliance time of 180 days. Based on this new data, the FAA has determined that an extension of the compliance time to 270 days for the initial inspection of the rudder pedals adjuster hub assembly is appropriate. The FAA has determined that such an extension of the compliance time will not adversely affect safety. The final rule has been revised accordingly.

Paragraph (c) of the final rule has been revised to clarify that replacement rudder pedals adjuster hub assemblies must continue to be inspected in accordance with the requirements of paragraph (a) of the AD (that is, the assembly must be inspected prior to the accumulation of 15,000 landings on the

assembly) and, if no cracks are detected, must be reinspected in accordance with paragraph (b) of the AD (that is, at intervals not to exceed 3,500 landings.) The notice only referenced paragraph (a) with regard to repetitive inspection intervals.

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 rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 341 McDonnell Douglas Model DC-8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 222 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $36,630, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-27-06. McDonnell Douglas: Amendment 39-8440. Docket 92-NM-110-AD.

Applicability: Model DC-8 series airplanes, as listed in McDonnell Douglas DC-8 Alert Service Bulletin A27-275, Revision 1, dated February 3, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder pedals control and reduction of braking capability, accomplish the following:

(a) Prior to the accumulation of 15,000 landings or within 270 days after the effective date of this AD, whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number 4616066, in accordance with McDonnell Douglas DC-8 Alert Service Bulletin A27-275, Revision 1, dated February 3, 1992.

(b) If no cracks are detected as a result of the inspections required by paragraph (a) of this AD, repeat the inspections at intervals not to exceed 3,500 landings.

(c) If cracks are detected as a result of the inspections required by paragraph (a) or (b) of this AD, prior to further flight, replace the rudder pedals adjuster hub assembly, part number 4616066, with a new assembly having the same part number, in accordance with McDonnell Douglas DC-8 Alert Service Bulletin A27-275, Revision 1, dated February 3, 1992. Thereafter, conduct visual and eddy current inspections of the replacement rudder pedals adjuster hub assembly in accordance with paragraphs (a) and (b) of this AD.

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

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

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

(f) The inspections and replacement shall be done in accordance with McDonnell Douglas DC-8 Alert Service Bulletin A27-275, Revision 1, dated February 3, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 22, 1993.

Issued in Renton, Washington, on December 9, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-30718 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-86-AD; Amendment 39-8441; AD 92-27-07]

Airworthiness Directives; McDonnell Douglas Model DC-9 and Model DC-9-80 Series Airplanes; Model MD-88 Airplanes; and C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9 and DC-9-80 series airplanes; Model MD-88 airplanes; and C-9 (military) airplanes. This amendment requires visual and eddy current inspections to detect cracking of the rubber pedals adjuster hub assembly and replacement of the assembly, if necessary. This amendment is promoted by several occurrences of failure of the rudder pedals adjuster hub assembly due to broken detent lugs. The actions specified by this AD are intended to prevent loss of rudder pedals control and reduction of braking capability.

DATES: Effective January 22, 1993.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–122L, FAA, Transport Airplane Directorate, 329 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (Military) series airplanes was published in the **Federal Register** on June 18, 1992 (57 FR 27199). That action proposed to require visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly and replacement of the assembly, if necessary.

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

One commenter supports the rule as proposed.

Several commenters request that the proposed compliance time of 180 days for the initial visual and eddy current inspection of the rudder pedals adjuster hub assembly be extended, for a variety of reasons:

One commenter requests that the compliance time be extended to 3,500 landings or 1 year, whichever occurs later. This commenter's entire fleet has accumulated in excess of 15,000 landings and would be required to accomplish the initial inspection within 180 days after the effective date of this AD. To do so would require that this commenter schedule numerous airplanes for the initial inspection and/or repair at places other than regular maintenance bases, where necessary equipment and trained personnel may not be available. The commenter considers this request to be justified since there have been no failures of the rudder pedals adjuster hub assembly on airplanes in its fleet.

Several other commenters are concerned about the possibility that sufficient replacement parts will be available, and request that the compliance time for inspections be extended. The commenters state that airplanes will be grounded if replacement of a lug or hub assembly is required within the proposed compliance time of 180 days and no replacement components are available.

The FAA concurs that the compliance time may be extended somewhat. Since issuance of the notice, the manufacturer has advised the FAA that it does not have an adequate supply of parts so that replacement, if necessary, could be accomplished on the U.S. fleet within the proposed compliance time of 180 days. Based on this new data, the FAA has determined that an extension of the compliance time to 270 days for the initial inspection is appropriate. Such an extension (1) will not adversely affect safety, (2) will allow the majority of affected operators sufficient time to schedule and accomplish the initial inspection and any necessary replacement during a regularly scheduled maintenance interval; and (3) will allow sufficient time for the manufacturer to procure a sufficient number of replacement parts.

Another commenter requests that this AD be delayed until such time that a terminating modification is available to operators. Since such a modification would terminate the requirement for repetitive inspections, the commenter asserts that delay of this AD will be a considerable cost and time savings for operators. The FAA does not concur. In its response to commenters, above, the FAA has already extended the compliance time for this AD by three additional months (in effect, delaying the AD for three months). The FAA has determined that any further delay of this AD is not warranted. The degradation of safety due to the unsafe condition outweighs any cost savings operators may incur if this AD is further delayed. The FAA has determined that the required inspections must be conducted in order to ensure continued safety. Once a terminating modification is developed and approved, the FAA may consider further rulemaking action at that time.

Paragraph (c) of the final rule has been revised to clarify that replacement rudder pedals adjuster hub assemblies must continue to be inspected in accordance with the requirements of paragraph (a) of the AD (that is, the assembly must be inspected prior to the accumulation of 15,000 landings on the assembly) and, if no cracks are detected, must be reinspected in accordance with paragraph (b) of the AD (that is, at intervals not to exceed 3,500 landings.) The notice only referenced paragraph (a) with regard to the repetitive inspection intervals.

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 rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 721 McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 373 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $61,545, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-27-07. McDonnell Douglas: Amendment 39-8441. Docket 92-NM-86-AD.

Applicability: Model DC-9-10, -20, -30, -40, and -50 series airplanes; Model DC-9-81, -82, -83, and -87 series airplanes; Model MD-88 airplanes; and C-9 (Military) airplanes; as listed in McDonnell Douglas DC-9 Alert Service Bulletin A27-325, Revision 1, dated February 3, 1992; certified in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder pedals control and reduction of braking capability, accomplish the following:

(a) Prior to the accumulation of 15,000 landings or within 270 days after the effective date of this AD, whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number, 4616066, in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A27-325, Revision 1, dated February 3, 1992.

(b) If no cracks are detected as a result of the inspections required by paragraph (a) of this AD, repeat the inspections at intervals not to exceed 3,500 landings.

(c) If cracks are detected as a result of the inspections required by paragraph (a) or (b) of this AD, prior to further flight, replace the rudder pedals adjuster hub assembly, part number 4616066, with a new assembly having the same part number, in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A27-325, Revision 1, dated February 3, 1992. Thereafter, conduct visual and eddy current inspections of the replacement rudder pedals adjuster hub assembly in accordance with paragraph (a) and (b) of this AD.

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

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

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

(f) The inspections and replacement shall be done in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A27-325, Revision 1, dated February 3, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 22, 1993.

Issued in Renton, Washington, on December 9, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-30719 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-212-AD; Amendment 39-8439; AD 92-24-51]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T92-24-51 that was sent previously to all known U.S. owners and operators of Boeing Model 747 series airplanes by individual telegrams. This AD supersedes an existing AD to require the replacement of certain nacelle strut midspar fuse pins, and inspections to detect corrosion and cracks of certain other fuse pins. This AD also decreases the initial inspection threshold and adds airplanes to the applicability of the AD. This amendment is prompted by numerous reports of corrosion and fatigue cracking found in the subject fuse pins. The actions specified by this AD are intended to prevent failure of the engine support structure and the inability of the strut to carry required engine support loads.

DATES: Effective January 4, 1993, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-24-51, issued November 13, 1992, which contained the requirements of this amendment.

Incorporation by reference of Boeing Service Bulletin 747-54-2063, Revision 9, dated April 23, 1992, was approved previously by the Director of the Federal Register as of November 27, 1992 (57 FR 53546, November 12, 1992).

The incorporation by reference of Boeing Alert Service Bulletin 747-54A2150, Revision 1, dated November 13, 1992, is approved by the Director of the Federal Register as of January 4, 1993.

Comments for inclusion in the Rules Docket must be received on or before February 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-212-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Backman, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2776; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On November 13, 1992, the FAA issued telegraphic AD T92-24-51, applicable to all Boeing Model 747 series airplanes, which supersedes AD 92-21-51 R1, Amendment 39-8414 (57 FR 53546, November 12, 1992).

The FAA previously issued AD 92-21-51 R1 on November 4, 1992. That AD was applicable to certain Boeing Model 747 series airplanes, and required:

1. Repetitive ultrasonic inspections to detect cracks in the "old style" nacelle strut midspar fuse pins, and replacement of the pins, if necessary;

2. Repetitive inspections of the "new style" fuse pins to detect cracks and corrosion, and rework or replacement of the pins, if necessary;

3. Repetitive detailed visual inspections of the midspar fitting lugs to detect cracks, and repair or replacement of any cracked lugs found; and

4. The submission of written reports to the FAA of all findings of cracks or corrosion as a result of initial inspections.

That AD action was prompted by 14 reports of fatigue cracks initiating at corrosion sites on the inside diameter of new style fuse pins at the pin insert on airplanes equipped with Pratt and Whitney and Rolls Royce engines. In addition, results of an inspection revealed a crack in a midspar fitting lug.

The actions required by that AD were intended to prevent failure of the engine support structure and the inability of the strut to carry the required engine support loads.

As a result of the reporting requirement of AD 92-21-51 R1, the FAA has received numerous reports of corrosion and 13 additional reports of fatigue cracking in new style fuse pins. The FAA has received reports of heavy corrosion found on fuse pins that were in service fewer than five years (approximately 5,000 landings). Therefore, the FAA has determined that the existing initial inspection threshold of 5,000 landings must be reduced in order to detect corrosion and cracking in a timely manner.

Recently, one operator reported that the ultrasonic inspection procedures required by AD 92-21-51 R1 failed to detect a crack in the presence of heavy corrosion. That AD requires removing one fuse pin insert and performing a visual inspection to detect corrosion, followed by an ultrasonic inspection to detect cracks. Due to the presence of heavy corrosion, the operator removed the fuse pin itself to perform the visual inspection to detect cracking in the corroded area. Subsequently, the operator and Boeing performed ultrasonic inspections of the fuse pin prior to removal of the corrosion; these inspections failed to detect cracking in the corroded area. From this data, the FAA concludes that the ultrasonic inspection procedure, as required by AD 92-21-51 R1, does not detect cracks reliably when corrosion is present. Since that AD requires inspection of the fuse pin from only one end, the possibility exists for corrosion or cracks to remain undetected in the other end of the pin. Therefore, the FAA has determined that it is necessary to correct this unsafe condition by requiring a detailed visual inspection to detect corrosion and, following the removal of any corrosion, an ultrasonic inspection to detect cracks from each end of the pin with both inserts removed.

Additionally, the FAA recently received a report of a cracked old style fuse pin that was found on a Model 747 series airplane that had accumulated 257 flight cycles since the last inspection of the fuse pins. These fuse pins were installed on earlier Model 747 series airplanes. Service data show that these old style fuse pins are even more susceptible to cracking than the new style fuse pins. Therefore, the FAA has determined that the old style fuse pins must be removed from service.

Fatigue cracks in the nacelle strut midspar fuse pins, if not detected and corrected, could result in failure of the engine support structure and the consequent inability of the strut to carry the required engine support loads.

(It should be noted that investigations related to two recent accidents, both of which involved Model 747-200 freighter airplanes, are continuing. These accidents occurred in Amsterdam in October 1992 and in Taiwan in December 1991. No determination has been made that cracking of the fuse pins was the cause of either accident.)

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-54A2150, Revision 1, dated November 13, 1992, that describes procedures for detailed visual inspections to detect corrosion and ultrasonic inspections to detect cracks of the new style fuse pins at both ends of the fuse pin, and replacement or rework of the pins, if necessary.

The fuse pins installed on the nacelle struts of Model 747 series airplanes equipped with General Electric engines are identical to those installed on Pratt and Whitney and Rolls Royce engines. In view of the widespread findings of corrosion and cracks on fuse pins installed on other types of engines, the FAA finds that this condition is likely to exist as well on airplanes equipped with General Electric engines.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued Telegraphic AD T92-24-51 on November 13, 1992, the requirements of which are intended to prevent failure of the nacelle strut midspar fuse pins. This AD is applicable to all Model 747 series airplanes, regardless of engine type. This AD supersedes AD 92-21-51 R1 to require removal of the old style nacelle strut midspar fuse pins and replacement of these fuse pins with new style fuse pins.

This AD also requires detailed visual inspections to detect corrosion and ultrasonic inspections to detect cracks of the new style fuse pins at both ends of the fuse pin, and replacement or rework, if necessary. These inspections are required to be accomplished in accordance with the service bulletin described previously.

This AD also decreases the initial inspection threshold from that specified in the existing AD and adds airplanes equipped with General Electric engines to the applicability of the AD.

It should be noted that repetitive ultrasonic inspections of the midspar fitting lugs are required currently by AD 85-22-07, Amendment 39-5153 (50 FR 42146, October 18, 1985). Inspecting these lugs using ultrasonic techniques, rather than the detailed visual techniques required by AD 92-21-51 R1, will detect cracking of the lugs more reliably. Consequently, the FAA has not included a requirement for detailed visual inspections of the lugs in this AD. The FAA may consider further rulemaking to address inspections of the lugs.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on November 13, 1992, to all known U.S. owners and operators of Boeing Model 747 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-212-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows: Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8414 (57 FR 53546, November 12, 1992), and by adding a new airworthiness directive (AD), to read as follows:

92-24-51. BOEING: Amendment 39-8439. Docket 92-NM-212-AD. Supersedes AD 92-21-51 R1, Amendment 39-8414.

Applicability: All Model 747 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note: Paragraphs (d) and (f) of this AD require inspections from both ends of the nacelle strut midspar fuse pins, whereas AD 92-21-51 R1, Amendment 39-8414 (57 FR 53546, November 12, 1992), which is superseded by this AD, required inspection from only one end of the fuse pins. As allowed by the phrase, "unless accomplished previously," paragraphs (d) and (f) of this AD do not require that the inspections performed previously from one end of the fuse pins in accordance with AD 92-21-51 R1 be repeated. For those fuse pins, only the end of the fuse pin not inspected previously must be inspected to comply with the initial inspection requirements of this AD.

To prevent failure of the nacelle strut midspar fuse pins, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove all old style nacelle strut midspar fuse pins and replace with new style fuse pins, in accordance with Boeing Service Bulletin 747-54-2063, Revision 9, dated April 23, 1992. When an old style fuse pin is removed, the engine must be removed in accordance with the Boeing Model 747 Maintenance Manual, section 54-10-03; or supported in accordance with the service bulletin; or supported in a manner approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) As of 30 days after the effective date of this AD, no person shall install an old style nacelle strut midspar fuse pin on any airplane.

(c) Perform the inspection required by paragraph (d) of this AD at the times specified in paragraph (c)(1), (c)(2), or (c)(3) of this AD, as applicable.

(1) For airplanes equipped with Pratt and Whitney or Rolls Royce engines on which the new style nacelle strut midspar fuse pins have accumulated 5,000 or more landings as of the effective date of this AD: Inspect inboard engine positions 2 and 3 within 30 days after the effective date of this AD; and inspect outboard engine positions 1 and 4 within 60 days after the effective date of this AD.

(2) For all other airplanes equipped with Pratt and Whitney, Rolls Royce, or General Electric engines having new style nacelle strut midspar fuse pins, other than those identified in paragraph (c)(1) of this AD: Inspect inboard engine positions 2 and 3 at the later of the times specified in paragraph (c)(2)(i) or (c)(2)(ii) of this AD.

(i) Prior to the accumulation of 3,000 landings on the fuse pin or within 3 years since installation of the fuse pin, whichever occurs first; or

(ii) Within 60 days after the effective date of this AD.

(3) For all other airplanes equipped with Pratt and Whitney, Rolls Royce, or General Electric engines having new style nacelle strut midspar fuse pins, other than those identified in paragraph (c)(1) of this AD: Inspect outboard engine positions 1 and 4 at the later of the times specified in paragraph (c)(3)(i) or (c)(3)(ii) of this AD:

(i) Prior to the accumulation of 3,000 landings on the fuse pin or within 3 years since installation of the fuse pin, whichever occurs first; or

(ii) Within 90 days after the effective date of this AD.

(d) In accordance with the compliance times specified in paragraph (c) of this AD, perform a detailed visual inspection to detect corrosion of the new style nacelle strut midspar fuse pins from each end of the fuse pin with the insert removed, in accordance with Boeing Alert Service Bulletin 747-54A2150, Revision 1, dated November 13, 1992. When a new style fuse pin is removed, the engine must be removed in accordance with the Boeing Model 747 Maintenance Manual, Section 54-10-03; or supported in accordance with the service bulletin; or supported in a manner approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) If corrosion is detected as a result of the inspection required by paragraph (d) of this AD, prior to further flight, accomplish the following:

(1) If the amount of corroded material that must be removed exceeds the 0.010-inch limit on the fuse pin inner diameter specified in the service bulletin, replace the fuse pin with a new style fuse pin. Thereafter, accomplish the actions required by this AD on the newly-installed fuse pins.

(2) If the amount of corroded material that must be removed is more than light, and equal to or less than the 0.010-inch limit on the fuse pin inner diameter specified in the service bulletin, rework the fuse pin in accordance with the service bulletin instructions, or replace the pin with a new style fuse pin. "Light" corrosion is characterized by discoloration or pitting to a depth of not more than 0.001-inch maximum. This type of corrosion can be removed normally by light hand sanding. A fuse pin that has been reworked in accordance with Boeing Alert Service Bulletin 747-54A2150, dated October 5, 1992; or Revision 1, dated November 13, 1992, must be replaced with a new fuse pin prior to the accumulation of 3,000 landings on the fuse pin, or 3 years since the pin was reworked and reinstalled, whichever occurs first.

(3) If the corrosion is light, remove the corroded material in accordance with the service bulletin. Thereafter, repeat the inspections required by paragraph (h) of this AD.

(f) Following accomplishment of the actions required by paragraphs (d) and (e) of this AD, if the fuse pin has been found to be corrosion free, or if the pin has been reworked on the airplane to remove light corrosion, prior to further flight, perform an ultrasonic inspection to detect cracks in the fuse pin from each end of the fuse pin with the insert removed, in accordance with Boeing Alert Service Bulletin 747-54A2150, Revision 1, dated November 13, 1992. When a new style fuse pin is removed, the engine must be removed in accordance with the Boeing Model 747 Maintenance Manual, section 54-10-03; or supported in accordance with the service bulletin; or supported in a manner approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(g) If any crack is found as a result of the inspections required by paragraph (d) or (f) of this AD, prior to further flight, replace the pin with a new style fuse pin in accordance with Boeing Alert Service Bulletin 747-54A2150, Revision 1, dated November 13, 1992. Thereafter, accomplish the actions required by this AD on the newly-installed fuse pins.

(h) Thereafter, repeat the actions required by paragraphs (d), (e), (f), and (g) of this AD at intervals not to exceed 500 landings.

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

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

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

(k) The inspections, replacement, and rework shall be done in accordance with Boeing Alert Service Bulletin 747-54A2150, Revision 1, dated November 13, 1992; and Boeing Service Bulletin 747-54-2063, Revision 9, dated April 23, 1992; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Incorporation by reference of Boeing Service Bulletin 747-54-2063, Revision 9, dated April 23, 1992, was approved previously by the Director of the Federal Register as of November 27, 1992 (57 FR 53546, November 12, 1992). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on January 4, 1993, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-24-51, issued on November 13, 1992, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 9, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-30700 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-228-AD; Amendment 39-8442; AD 92-27-08]

Airworthiness Directives; Cessna Citation Model 650 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Cessna Citation Model 650 series airplanes. This action requires a one-time inspection of the inboard attach fittings of the elevator torque tubes to detect cracking and to determine the thickness of the wall of the fitting; and the replacement of the fittings, if necessary. This amendment is prompted by a report indicating that a single inboard attach fitting on an elevator torque tube was found cracked. The actions specified in this AD are intended to prevent potential loss of elevator control.

DATES: Effective January 4, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 1993.

Comments for inclusion in the Rules Docket must be received on or before February 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-228-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Douglas Haig, Aerospace Engineer, Airframe Branch, ACE-120W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4125; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION: Recently, the manufacturer found a cracked inboard attach fitting of the elevator torque tube, while installing a modification on a Cessna Citation Model 650 series airplane. The cause of this cracking has been attributed to insufficient thickness in the wall of the inboard attach fitting of the elevator torque tube. The discrepant part was installed at the time of manufacture of the airplane; however, the manufacturer subsequently purged all discrepant parts from its stock. Inboard attach fittings of the elevator torque tube with appropriate thickness in the wall have been installed on airplanes having serial numbers -0220 and subsequent, and -7014 and subsequent. Cracked attach fittings, if not detected and corrected in a timely manner, could lead to failure of the fitting and consequent loss of elevator control.

The FAA has reviewed and approved Cessna Citation Alert Service Letter A650-27-30, dated November 12, 1992, that describes procedures for inspection to determine the minimum material wall thickness of the inboard attach fittings of the elevator torque tube, and the replacement of the fittings, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other Cessna Citation Model 650 series airplanes of the same type design, this AD is being issued to prevent the potential loss of elevator control. This AD requires a one-time inspection of the inboard attach fittings of the elevator torque tube to detect cracking and to determine the thickness of the wall of the fitting; and replacement of the fittings, if necessary. The actions are required to be accomplished in accordance with the alert service letter described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-228-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

92-27-08. Cessna: Amendment 39-8442. Docket 92-NM-228-AD.

Applicability: Citation Model 650 series airplanes, having serial numbers -0001 thru -0219, inclusive, and -7001 thru -7013, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent the potential loss of elevator control, accomplish the following:

(a) Within 25 hours time-in-service after the effective date of this AD: Perform an inspection of the inboard attach fittings of the left-hand and right-hand elevator torque tubes to determine minimum material wall thickness in accordance with Cessna Citation Alert Service Letter A650-27-30, dated November 12, 1992; and perform a visual inspection of the fittings to detect cracking.

(1) If the material thickness of the inboard attach fitting, at all locations, is 0.045 inch or thicker, and if no cracked fitting is found, no further action is required by this AD.

(2) If the material thickness of the inboard attach fitting, at any location, is equal to or greater than 0.040 inch but less than 0.045 inch, and if no cracked fitting is found, within 150 flight hours, replace the inboard attach fitting in accordance with the service letter.

(3) If the material thickness of the inboard attach fitting, at any location, is thinner than 0.040 inch, or if a cracked fitting is found, prior to further flight, replace the fitting with a fitting having part number 6234132-8, in accordance with the service letter.

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

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

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

(d) The inspection and replacement shall be done in accordance with Cessna Citation Alert Service Letter A650-27-30, dated November 12, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 4, 1993.

Issued in Renton, Washington, on December 9, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-30701 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 778 and 799

[Docket No. 920817-2217]

Revisions to the Commerce Control List: Chemical Precursors, Microorganisms and Toxins

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: The Bureau of Export Administration maintains the Commerce Control List (CCL), which appears in the Export Administration Regulations (EAR). This rule amends the CCL by revising Export Control Classification Numbers (ECCNs) 1C60C and 1C61B. These ECCNs control dual-use items that can be used in the production of chemical and biological weapons (CBW). The changes made by

this rule are intended to conform the list of CBW related items controlled by the United States to the lists of items agreed to and adopted by countries participating in the Australia Group.

DATES: This rule is effective December 18, 1992. Comments must be received by January 19, 1993.

ADDRESSES: Written comments (six copies) should be sent to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: For questions on foreign policy controls, call Toni Jackson, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 482-4531.

For questions of a technical nature on chemical weapon precursors, biological agents, and equipment that can be used to produce chemical and biological weapons agents, call James Seevaratnam, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 482-4777.

SUPPLEMENTARY INFORMATION:

Background

This interim rule amends ECCN 1C60C by adding four chemical precursors to the list of items controlled: Sulfur monochloride (C.A.S. #10025-67-9), sulfur dichloride (C.A.S. #10545-99-0), N,N-Diisopropyl-2-aminoethyl chloride hydrochloride (C.A.S. #4261-68-1), and triethanolamine hydrochloride (C.A.S. #637-39-8). These items are added to ECCN 1C60C in order to conform the list of chemical precursors controlled by the United States with the list of chemical precursors adopted by the countries participating in the Australia Group. The twenty-two member Australia Group, in which the United States participates, seeks to prevent the proliferation of chemical and biological weapons.

Exports and reexports of chemical precursors controlled by ECCN 1C60C require an individual validated license to all destinations, except countries participating in the Australia Group or NATO. In addition to the United States and Canada, the countries participating in the Australia Group include: Australia, Austria, Belgium, Denmark, Germany, Finland, France, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Prior to the publication of this interim rule, exports and reexports to Finland or Sweden of chemical precursors controlled by ECCN 1C60C required an individual validated license. This interim rule removes the individual validated license requirement for Finland and Sweden, since both countries now participate in the Australia Group.

This rule also amends ECCN 1C61B to add the following microorganisms that the delegates at the June 1992 meeting of the Australia Group agreed to adopt, subject to approval by their governments:

(1) *Viruses:* African swine fever virus, avian influenza virus, bluetongue virus, foot and mouth disease virus, goat pox virus, herpes virus (Aujeszky's disease), hog cholera virus, Newcastle disease virus, peste des petits ruminants virus, porcine enterovirus type 9, rinderpest virus, sheep pox virus, teschen disease virus, and vesicular stomatitis virus;

(2) *Bacteria:* Mycoplasma mycoides, pseudomonas solanacerum, xanathonomas campestris pv citri, and xanthomonas campestris pv oryzae;

(3) *Fungi:* Heliminthosporium maydis, heliminthosprium oryzae, puccinia glumarum, puccinia graminis, puccinia striiformis, pyricularia grisea, and ustilago maydis.

(4) *Genetically modified microorganisms:* (a) Genetically modified micro-organisms or genetic elements that contain nucleic acid sequences associated with pathogenicity and are derived from organisms identified in the Commerce Control List (CCL);

(b) Genetically modified micro-organisms or genetic elements that contain nucleic acid sequences associated with pathogenicity derived from plant pathogens identified in the Commerce Control List (CCL).

Exports and reexports of microorganisms and toxins controlled by 1C61B require an individual validated license to all destinations except Canada.

The additions to ECCN 1C61B made by this interim rule follow a total revision of this entry by an interim rule published on July 15, 1992 (57 FR 31309). That interim rule revised ECCN 1C61B to provide a positive list of viruses, rickettsiae, bacteria, genetically modified organisms, and toxins. The changes made by the July 15, 1992, interim rule marked the first time the Australia Group had agreed in principle to establish multilateral export controls on biological items. The Administration has been working in cooperation with participating governments in the Australia Group to establish multilateral controls on CBW related items.

Savings Clause

Shipments of items removed from general license authorizations as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard carrier to a port of export pursuant to actual orders for export before January 4, 1993 may be exported under the previous general license provisions up to and including January 19, 1993. Any such items not actually exported before midnight January 19, 1993, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005 and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

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 3(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.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close January 19, 1993. The Department will consider all comments received before the close of the comment period in developing final

regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482-5653.

List of Subjects

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 778 and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 778 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

2. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 778—[AMENDED]

3. Section 778.8 is amended:

a. By revising paragraph (a)(1) introductory text;

b. By revising paragraph (a)(5)(i);

c. By revising paragraph (a)(5)(iv)(B); and

d. By revising paragraph (a)(5)(v), to read as follows:

§ 778.8 Chemical precursors and biological agents, and associated equipment, software, and technology.

(a) * * *

(1) Chemicals identified in ECCN 1C60 require a validated license for export from the United States to all destinations except Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

* * * * *

(5) * * *

(i) General License GTDR is not available for technical data for the production of chemical precursors described in paragraph (a)(1) of this section, except to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom;

* * * * *

(iv) * * *

(B) This prohibition on use of General License GTDR is available only to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom;

(v) General License GTDR is available only to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom, for software for process control that is specifically configured to control or initiate the production of chemical weapons precursors controlled by ECCN 1C60.

* * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

4. In Supplement No. 1 to § 799.1, Category 1, ECCN 1C60C is revised to read as follows:

1C60C Precursor and intermediate chemicals used in the production of chemical warfare agents.

Requirements

Validated License Required: QSTVWYZ, *except* Australia, Austria, Belgium, Denmark, Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

Unit: Liters or kilograms, as appropriate

Reason for Control: CB

GLV: $0

GCT: No

GFW: No

Notes: 1. *Sample Shipments:* General License G–DEST is available for one sample shipment of a 55-gallon container (209 liters) or less of each chemical to any one consignee per calendar year (not applicable to Iran, Iraq, Syria, Country Groups S and Z, the South

African military and police, or countries subject to an embargo administered by the Department of the Treasury).

2. *Compounds:* General License G–DEST is available, except to Country Groups S and Z and the South African military and police, for compounds that are created from chemicals controlled under this ECCN 1C60C provided that the compound itself is not controlled under this ECCN or another ECCN on the CCL. (Mixtures that contain chemicals controlled under this ECCN are controlled as precursors, except when the precursor chemical is merely an impurity that was not intentionally added or is a normal ingredient in consumer goods intended for retail sales.)

List of Items Controlled

(See Supplement No. 1 to § 799.2, Interpretation 23: Precursor Chemicals, for synonyms for the following chemicals.)

1. (C.A.S. #1341–49–7) Ammonium hydrogen fluoride;
2. (C.A.S. #7784–34–1) Arsenic trichloride;
3. (C.A.S. #76–93–7) Benzilic acid;
4. (C.A.S. #107–07–3) 2-Chloroethanol;
5. (C.A.S. #78–38–6) Diethyl ethylphosphonate;
6. (C.A.S. #15715–41–0) Diethyl methylphosphonite;
7. (C.A.S. #2404–03–7) Diethyl-N,N-dimethylphosphoroamidate;
8. (C.A.S. #762–04–9) Diethyl phosphite;
9. (C.A.S. #100–37–8) N,N-Diethylethanolamine;
10. (C.A.S. #5842–07–9) N,N-Diisopropyl-.beta.-aminoethane thiol;
11. (C.A.S. #4261–68–1) N,N-Diisopropyl-.2.-aminoethyl chloride hydrochloride;
12. (C.A.S. #96–80–0) N,N-Diisopropyl-.beta.-aminoethanol;
13. (C.A.S. #96–79–7) N,N-Diisopropyl-.beta.-aminoethyl chloride;
14. (C.A.S. #108–18–9) Diisopropylamine;
15. (C.A.S. #6163–75–3) Dimethyl ethylphosphonate;
16. (C.A.S. #756–79–6) Dimethyl methylphosphonate;
17. (C.A.S. #868–85–9) Dimethyl phosphite (dimethyl hydrogen phosphite);
18. (C.A.S. #124–40–3) Dimethylamine;
19. (C.A.S. #506–59–2) Dimethylamine hydrochloride;
20. (C.A.S. #57856–11–8) O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL);
21. (C.A.S. #1498–40–4) Ethylphosphonous dichloride [Ethylphosphinyl dichloride];[1]
22. (C.A.S. #430–78–4) Ethylphosphonous difluoride [Ethylphosphinyl difluoride];[1]
23. (C.A.S. #1066–50–8) Ethylphosphonyl dichloride;
24. (C.A.S. #753–98–0) Ethylphosphonyl difluoride;
25. (C.A.S. #7664–39–3) Hydrogen fluoride;
26. (C.A.S. #3554–74–3) 3-Hydroxyl-1-methylpiperidine;
27. (C.A.S. #76–89–1) Methyl benzilate;
28. (C.A.S. #676–83–5) Methylphosphonous dichloride [Methylphosphinyl dicloride];[1]
29. (C.A.S. #753–59–3) Methylphosphonous difluoride [Methylphosphinyl difluoride];[1]
30. (C.A.S. #676–97–1) Methylphosphonyl dichloride;
31. (C.A.S. #676–99–3) Methylphosphonyl difluoride;
32. (C.A.S. #10025–87–3) Phosphorus oxychloride;
33. (C.A.S. #10026–13–8) Phosphorus pentachloride;
34. (C.A.S. #1314–80–3) Phosphorus pentasulfide;
35. (C.A.S. #7719–12–2) Phosphorus trichloride;
36. (C.A.S. #75–97–8) Pinacolone;
37. (C.A.S. #464–07–3) Pinacolyl alcohol;
38. (C.A.S. #151–50–8) Potassium cyanide;
39. (C.A.S. #7789–23–3) Potassium fluoride;
40. (C.A.S. #7789–29–9) Potassium hydrogen fluoride;
41. (C.A.S. #1619–34–7) 3-Quinuclidinol;
42. (C.A.S. #3731–38–2) 3-Quinuclidinone;
43. (C.A.S. #1333–83–1) Sodium bifluoride;
44. (C.A.S. #143–33–9) Sodium cyanide;
45. (C.A.S. #7681–49–4) Sodium fluoride;
46. (C.A.S. #1313–82–2) Sodium sulfide;
47. (C.A.S. #10025–67–9) Sulfur monochloride;
48. (C.A.S. #10545–99–0) Sulfur dichloride;
49. (C.A.S. #111–48–8) Thiodiglycol;
50. (C.A.S. #7719–09–7) Thionyl chloride;
51. (C.A.S. #102–71–6) Triethanolamine;
52. (C.A.S. #637–39–8) Triethanolamine hydrochloride;
53. (C.A.S. #122–52–1) Triethyl phosphite; and
54. (C.A.S. #121–45–9) Trimethyl phosphite.

5. In Supplement No. 1 to § 799.1, Category 1, ECCN 1C61B is revised to read as follows:

1C61B Microorganisms and toxins.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: CB
GLV: $ 0
GCT: No
GFW: No

List of Items Controlled

a. Viruses, as follows:
a.1. African swine fever virus;
a.2. Avian influenza virus;
a.3. Bluetongue virus;
a.4. Chikungunya virus;
a.5. Congo-Crimean haemorrhagic fever virus;
a.6. Dengue fever virus;
a.7. Eastern equine encephalitis virus;
a.8. Ebola virus;
a.9. Foot and mouth disease virus;
a.10. Goat pox virus;
a.11. Hantaan virus;
a.12. Herpes virus (Aujeszky's disease);
a.13. Hog cholera virus;
a.14. Japanese encephalitis virus;
a.15. Junin virus;
a.16. Lassa fever virus;
a.17. Lymphocytic choriomeningitis virus;
a.18. Machupo virus;
a.19. Marburg virus;
a.20. Monkey pox virus;
a.21. Newcastle disease virus;
a.22. Peste des petits ruminants virus;
a.23. Porcine enterovirus type 9;
a.24. Rift Valley fever virus;
a.25. Rinderpest virus;
a.26. Sheep pox virus;
a.27. Teschen disease virus;
a.28. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);
a.29. Variola virus;
a.30. Venezuelan equine encephalitis virus;
a.31. Vesicular stomatitis virus;
a.32. Western equine encephalitis virus;
a.33. White pox; or
a.34. Yellow fever virus.

b. Rickettsiae, as follows:
b.1. Coxiella burnetii;
b.2. Rickettsia quintana;
b.3. Rickettsia prowasecki; or
b.4. Rickettsia rickettsii.

c. Bacteria, as follows:
c.1. Bacillus anthracis;
c.2. Brucella abortus;
c.3. Brucella melitensis;
c.4. Brucella suis;
c.5. Chlamydia psittaci;
c.6. Clostridium botulinum;
c.7. Francisella tularensis;
c.8. Mycoplasma mycoides;
c.9. Pseudomonas mallei;
c.10. Pseudomonas pseudomallei;
c.11. Pseudomonas solanacerum;
c.12. Salmonella typhi;
c.13. Shigella dysenteriae;
c.14. Vibrio cholerae;
c.15. Xanthonomas campestris pv citri;
c.16. Xanthomonas campestris pv oryzae; or
c.17. Yersinia pestis.

[1] Chemical name used elsewhere in the List of Chemicals for this ECCN 1C60C.

d. Fungi, as follows:
d.1. Heliminthosporium maydis;
d.2. Heliminthosporium oryzae;
d.3. Puccinia glumarum;
d.4. Puccinia graminis;
d.5. Puccinia striiformis;
d.6. Pyricularia grisea; or
d.7. Ustilago maydis.

e. Genetically modified micro-organisms, as follows:

e.1. Genetically modified micro-organisms or genetic elements that contain nucleic acid sequences associated with pathogenicity and are derived from organisms identified in this ECCN;

e.2. Genetically modified micro-organisms or genetic elements that contain nucleic acid sequences associated with pathogenicity derived from plant pathogens identified in this ECCN; or

e.3. Micro-organisms genetically modified to produce any of the toxins listed in paragraph f. of this ECCN.

f. Toxins, as follows:
f.1. Botulinum toxins;
f.2. Clostridium perfringens toxins;
f.3. Conotoxin;
f.4. Mocrocystin (cyanogenosin);
f.5. Ricin;
f.6. Saxitoxin;
f.7. Shiga toxin;
f.8. Staphylococcus aureus toxins;
f.9. Tetrodotoxin; or
f.10. Verotoxin.

Dated: December 11, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92-30514 Filed 12-17-92; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8432]

RIN 1545-AP18

Branch Profits Tax; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8432, which was published in the **Federal Register** for Friday, September 11, 1992 (57 FR 41644). The final regulations relate to the branch profits tax, branch-level interest tax and qualified resident rules issued under section 884 of the Internal Revenue Code of 1986.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth U. Karzon, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide guidance needed to comply with this section and generally affect foreign corporations engaged in trade or business in the United States. These regulations also provide guidance relating to the application of section 884 to foreign governments in light of the changes made by the Technical and Miscellaneous Revenue Act of 1988 under section 892(a)(3) of the Internal Revenue Code.

Need for Correction

As published, T.D. 8432 contains errors which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8432), which was the subject of FR Doc. 92-21297, is corrected as follows:

§ 1.884-0 [Corrected]

1. On page 41650, column 2, § 1.884-0(b), the entry for § 1.884-2T(c)(3), first line, the language, "Transferor's dividend equivalent among" is corrected to read "Transferor's dividend equivalent amount".

§ 1.884-1 [Corrected]

2. On page 41651, column 3, § 1.884-1(b)(4), *Example 5*, third line from the bottom of the paragraph, the language "A has $50 of accumulated ECEP (i.e. 110" is corrected to read "A has $50 of accumulated ECEP (i.e. $110".

3. On page 41653, column 1, § 1.844-1(d)(2)(vii) is corrected to read:

(d) * * *

(2) * * *

(vii) *Securities held by a foreign corporation engaged in a banking, financing or similar business.* Securities described in § 1.864-4(c)(5)(ii)(*b*)(*3*) held by a foreign corporation engaged in the United States during the taxable year shall be treated as U.S. assets in the same proportion that income, gain, or loss from such securities is ECI for the taxable year under § 1.864-4(c)(5)(ii).

4. On page 41654, column 1, § 1.884-1(d)(3)(iii), in the *Example*, line fifteen, the language, "The real estate securities each have an" is corrected to read "The real estate and the securities each have an".

§ 1.884-2T [Corrected]

5. On page 41659, column 3, § 1.884-2T(b), second line from the bottom of the paragraph, the language "substitution is not less than their" is corrected to read "substitution not less than their".

§ 1.884-4 [Corrected]

6. On page 41663, column 2, § 1.884-4(b)(6)(ii), line ten, the language, "next latest payment until the amount of" is corrected to read "next-latest payment until the amount of".

§ 1.884-5 [Corrected]

7. On page 41667, column 2, § 1.884-5(b)(1)(iv)(B), line three, the language "its not-for-profit status;" is corrected to read "its not-for-profit status; and".

8. On page 41669, column 1, § 1.884-5(b)(3)(iii), second line from the bottom of the concluding text, the language, "conditions set forth in this paragraph are" is corrected to read "conditions set forth in this paragraph (b)(3)(iii) are".

9. On page 41669, column 1, § 1.884-5(b)(3)(v), line twelve, the language, "specified in paragraph (b)(3) or (b)(8) of" is corrected to read "specified in this paragraph (b)(3) or (b)(8) of".

10. On page 41669, column 1, § 1.884-5(b)(3)(v), line twenty-one, the language, "in a timely manner and a describing the" is corrected to read "in a timely manner and describing the".

11. On page 41675, column 3, § 1.884-5(e)(4)(iii), the last line of the paragraph, the language, "consistent manner from year-to-year" is corrected to read "consistent manner from year to year".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-30310 Filed 12-17-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 92-119]

Special Local Regulations; City of Pompano Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the 30th Annual Christmas Boat Parade. This event will be held on December 20, 1992, from 6:30 p.m. e.s.t. (Eastern Standard Time) until 9 p.m. e.s.t. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations will become effective on December 20, 1992, at 6 p.m. e.s.t. and terminate on December 20, 1992, at 9:30 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: LTJG T.M. Perez, U.S.C.G. Group Miami, (305) 535-4346.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable as there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LT Jacqueline M. Losego, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG Teresa M. Perez, Project Officer, U.S.C.G. Group Miami.

Discussion of Regulations

The City of Pompano Beach 30th Annual Christmas Boat Parade is a nighttime parade of approximately one hundred fifty (150) pleasure and fishing boats ranging in length from 23 feet to 125 feet and decorated with holiday lights. There will be approximately seventh-five (75) spectator craft.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service, the Florida Department of Natural Resources, and the National Marine Fisheries Service about the environmental impact of this event, and it was determined that the event does not threaten protected species.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-07-119 is added to read as follows:

§ 100.35-07-119 City of West Palm Beach, FL.

(a) *Regulated Area.* A regulated area is established in the Intracoastal Waterway with the southern boundary formed by latitude 26-13 N, the northern boundary formed by latitude 26-15 N, and the eastern and western boundaries formed by the ICW.

(b) *Special local regulations.* (1) Vessel movement or anchoring in the regulated area is prohibited unless authorized by the Patrol Commander.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective dates:* These regulations become effective on December 20, 1992, from 6 p.m. e.s.t., and terminate on December 20, 1992, at 9:30 p.m. e.s.t.

Dated: December 2, 1992.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 92-30787 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 92-131]

Safety Zone; Sandy Hook Bay, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard plans to establish a safety zone in Sandy Hook Bay, New Jersey. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with an Army training exercise involving numerous parachutists entering a drop zone in this area. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATE: This zone becomes effective on January 9, 1993 between 12 p.m. and 8 p.m., and again on January 10, 1992 between 1:30 am to 5 am.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) J. E. Peschel, Waterways Management Officer, Coast Guard Group New York (212) 668-7933

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG J. E. Peschel, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards, and sufficiently protect the boating public from this Army training exercise. Due to the date that this application was received, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

This regulation is required to protect the maritime public from possible dangers and hazards associated with an Army training exercise in the waters of Sandy Hook Bay. The exercise includes a large number of paratroopers dropping into a ½ mile drop zone. This zone is needed to protect the participants from marine traffic and also to aid in rescue operations should the need arise. No vessel will be permitted to enter or move within the safety zone unless authorized to do so by Captain of the Port, New York.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The impact of this regulation is expected to be minimal due to the following factors: Limited duration of the exercises, the extensive advisories made to the affected maritime community, the location of the zone away from shipping channels, and the fact that the event is taking place on a Saturday night and Sunday morning, which typically doesn't experience a significant volume of commercial marine traffic. The Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominent in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

1. The authority citation for part 165 continuous to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. A temporary § 165.T01–131 is added to read as follows:

§ 165.T01–131 Sandy Hook Bay, New Jersey.

(a) *Location.* The safety zone will include all waters of Sandy Hook Bay within a 1000 yard radius of a point located at 40° 26′ 30″N and 74° 02′ 00″W, located approximately 1.5 miles north of Atlantic Highlands, NJ shoreline.

(b) *Effective period.* This zone becomes effective on January 9, 1993 between 12 p.m. and 8 p.m., and again on January 10, 1993 between 1:30 am to 5 am.

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the safety zone during the effective period of regulation unless participating in the event as authorized by the U.S. Coast Guard Captain of the Port (COTP), New York. The COTP will attempt to minimize any delays for commercial vessels transiting the area and will monitor channel 16 VHF–FM.

(2) All persons and vessels shall comply with the instructions of the COTP NY or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and only proceed as directed.

Dated: December 3, 1992.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 92–30785 Filed 12–17–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 124

[FRL–4546–9]

Changes to Regulations to Reflect the Role of the Environmental Appeals Board in Agency Adjudications; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendments.

SUMMARY: This document contains corrections to the final regulations published on Thursday, February 13, 1992. The regulations were promulgated to reflect the role of the Environmental Appeals Board in Agency adjudications.

EFFECTIVE DATE: December 18, 1992.

FOR FURTHER INFORMATION CONTACT: James W. Black, Environmental Appeals Board (MC–1103B), 401 M Street, SW., Washington, DC 20460, (202) 501–7077.

SUPPLEMENTARY INFORMATION: Parts 22 and 124 of title 40 of the Code of Federal Regulations contain procedures governing most administrative permit and penalty proceedings conducted by the Agency. On February 13, 1992, parts 22 and 124 were amended to reflect the role of the newly created Environmental Appeals Board as the final Agency decisionmaker in such cases. As published, however, the final regulations contain technical errors that may cause confusion and are therefore in need of clarification.

In addition, when the February 13, 1992 rule change was published, the Agency had intended to include in that rule change a revision of 40 CFR 124.5(b), which provides that denials of requests for modification, revocation and reissuance, or termination of the permit under that section may be informally appealed to the Administrator. The Agency had intended to include in the February 13, 1992 rule change an amendment reflecting the fact that the Board has received delegated authority from EPA's Administrator to render final Agency decisions in such informal appeals. The Agency inadvertently neglected to include such an amendment in the February 13, 1992 rule change. That the Agency had intended to include such an amendment in the rule change is evident from the fact that the rule change did amend paragraph 1.c.ii. of figure 1 of appendix A of part 124 to provide that if a request for modification, revocation and reissuance, or termination under § 124.5 is denied, an informal appeal to the Board is available. The inconsistency between appendix A of part 124 and paragraph (b) of § 124.5 is hereby being corrected.

List of Subjects

40 CFR Part 22

Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Water pollution control.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous waste, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Edward E. Reich,

Environmental Appeals Judge.

Accordingly, 40 CFR ch. I is amended as follows.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION OR SUSPENSION OF PERMITS

1. The authority citation for part 22 continues to read as follows:

Authority: 15 U.S.C. 2615; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547(d), 7601 and 7607(a); 7 U.S.C. 136 (l) and (m); 33 U.S.C. 1319, 1415 and 1418; 42 U.S.C. 6912, 6928, and 6991(e); 42 U.S.C. 9609; 42 U.S.C. 11045.

2. Section 22.04 is amended by revising the section heading to read as follows:

§ 22.04 Powers and duties of the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer, and the Presiding Officer; disqualification.

* * * * *

3. Section 22.16 is amended by revising the first and last sentences of paragraph (b) to read as follows:

§ 22.16 Motions.

* * * * *

(b) * * * A party's response to any written motion must be filed within ten (10) days after service of such motion, unless additional time is allowed for such response. * * * The Presiding Officer, the Regional Administrator, or the Environmental Appeals Board, as appropriate, may set a shorter time for response, or make such orders concerning the disposition of motions as they deem appropriate.

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C.300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Section 124.2 is amended by revising the second sentence of the definition of "Environmental Appeals Board" to read as follows:

§ 124.2 Definitions.

* * * * *

Environmental Appeals Board

* * * The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in RCRA, PSD, UIC, or NPDES permit appeals filed under this subpart, including informal appeals of denials of requests for modification, revocation and reissuance, or termination of permits under Section 124.5(b). * * *

* * * * *

3. Section 124.5 is amended by revising the third, fourth, and fifth sentences of paragraph (b) to read as follows:

§ 124.5 Modification, revocation and reissuance, or termination of permits.

* * * * *

(b) * * * Denials by the Regional Administrator may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Environmental Appeals Board may direct the Regional Administrator to begin modification, revocation and reissuance, or termination proceedings under paragraph (c) of this section. The appeal shall be considered denied if the Environmental Appeals Board takes no action on the letter within 60 days after receiving it. * * *

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[FR Doc. 92-30777 Filed 12-17-92; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-4153-5]

Extension of States' Interim Authorization Option to Implement HSWA Regulations

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule with request for comments.

SUMMARY: Pursuant to sections 3006(c)(2) and 3006(g) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6926(c)(2) and (g), the U.S. Environmental Protection Agency (EPA) extends until January 1, 2003, the availability of interim authorization for States to implement requirements of the 1984 Hazardous and Solid Waste Amendments (HSWA). The current regulatory deadline, as codified in 40 CFR 271.24, is scheduled to expire on January 1, 2003. A State will need to obtain final authorization by that date for those requirements for which it holds HSWA interim authorization. EPA is promulgating this action as an interim final rule to maintain the availability of HSWA interim authorization for eligible States and to avoid the reversion to EPA of those portions of State programs with HSWA interim authorization.

Through HSWA interim authorization, EPA may authorize State hazardous waste programs which are substantially equivalent to federal regulations issued under HSWA. It can be used to enhance and expedite State authorization and reduce EPA's direct implementation responsibility.

DATES: This extension of HSWA interim authorization availability to the States shall be effective on December 18, 1992. Comments on this interim final rule will be accepted until January 19, 1993. EPA will promulgate a final rule affirming or modifying the interim final rule in response to any comments April 19, 1993.

ADDRESSES: The public must send an original and two copies of their comments to: EPA RCRA Docket Clerk, room 2427 (OS-332), 401 M Street, SW., Washington, DC 20460.

Place "Docket Number F92-ISAP-FFFFF" on your comments. Copies of materials relevant to this interim rulemaking are located in the docket at the address listed above. The Office of Solid Waste (OSW) Docket is located in room 2427 at the above address, and is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: Richard LaShier, State and Regional Programs Branch, Permits and State Programs Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-2210.

SUPPLEMENTARY INFORMATION:

I. Background

When Congress enacted RCRA in 1976, interim authorization was established to allow States to continue operating their own hazardous waste programs, while striving to achieve the requirements for final authorization, RCRA section 3006(c), 42 U.S.C. 6926(c). Interim authorization was the vehicle used to expedite the States' lead in hazardous waste program implementation, thus reducing the time during which there would be dual Federal/State programs. It was intended to provide States a transition period to adopt all the changes necessary to implement programs equivalent to the Federal requirements. The statutory provision for interim authorization under RCRA expired on January 31, 1986. See 45 FR 33378 (May 19, 1980) for more information about interim authorization for the base RCRA program.

Under RCRA, the relationship between the Federal and State program is structured so that once a State becomes authorized for the base RCRA

program, any additional RCRA regulations promulgated by EPA only become effective in the authorized State once the State has adopted those regulatory provisions. EPA reviews and authorizes these program revisions as they are submitted by the State.

The Hazardous and Solid Waste Amendments (HSWA), enacted in 1984, changed the Federal/State relationship. Regulations promulgated under HSWA authority become effective at the same time in all States and are implemented by EPA until the State has revised its regulatory program and received authorization for those provisions. HSWA also included a new provision, section 3006(g)(2), to allow EPA to grant interim authorization for the implementation of HSWA provisions to any State which received interim or final authorization for RCRA prior to the enactment of HSWA, and which submitted evidence showing that the State's analogous requirements were substantially equivalent to the Federal regulations. The new HSWA interim authorization provision provided States a developmental period in which to prepare requirements fully equivalent to the Federal regulations, and ensure adequate State capability to carry-out the program.

Congress did not establish an expiration date for interim authorization under the new HSWA provision, section 3006(g), but section 3006(c)(2) required EPA to establish a regulatory deadline for the expiration of HSWA interim authorization. EPA selected January 1, 1993 as the deadline for HSWA interim authorization expiration, expecting that date to provide adequate time for the States to adopt the HSWA provisions, including any modifications they deemed necessary. See 50 FR 28731–28732 (July 15, 1985) and 51 FR 33712, 33719 (September 22, 1986).

II. Discussion

Final authorization allows a State to implement its own hazardous waste program in lieu of EPA, once it has demonstrated that its program is "equivalent" to the Federal requirements. However, to obtain interim authorization, a State must only show that its program is "substantially equivalent" to the Federal program. A substantially equivalent State program may include most, but not all of the provisions of the Federal program. Without interim authorization, a State must first modify its provisions in order to make them fully equivalent to the Federal requirements. These modifications may require additional State rulemaking or amendments to State statutes, which may take a minimum of one to two years to complete. Until EPA grants a State either interim or final authorization for a particular HSWA requirement, EPA must implement that HSWA requirement. This dual Federal/State implementation creates unnecessary costs and a duplication of efforts.

The legislative history of both RCRA and HSWA indicates that Congress intended that the Federal program be administered so as to encourage each State to assume or continue primary responsibility for program administration. Congress intended that States be granted interim authorization in a relatively liberal manner to encourage States to take the lead in program implementation. Congress clearly provided for interim authorization for both RCRA and HSWA requirements. With the HSWA interim authorization provision, States can assume the lead role in HSWA implementation more rapidly, pending final authorization.

Despite the eight year time period that had been considered sufficient for interim authorization, the need for the provision remains. The overall RCRA program and authorization process has become much more complex than when HSWA was first enacted. Since November 1984, the Office of Solid Waste has published 38 regulations and listing determinations based on HSWA, and the regulatory development process is not yet complete. EPA projects the completion of 27 or more additional HSWA rulemakings through at least the fall of 1998.

Although many States have adopted as part of their State law many of the HSWA requirements, EPA authorization of State regulations in lieu of both RCRA and HSWA Federal rules has lagged. Only fourteen States (as of May 30, 1992) have been authorized for any of the HSWA regulations promulgated since June 30, 1987. No State has achieved final authorization for all of the HSWA requirements promulgated to date.

Some States are currently operating portions of the HSWA program on an interim basis, and others may be considered for HSWA interim authorization in early 1993. Expiration of HSWA interim authorization availability on January 1, 1993 would cause those portions of the State program that are authorized on an interim basis to revert to EPA for implementation. Reversion of the affected portions of the State program would cause disruption for States currently granted HSWA interim authorization, and impede other States eligible for HSWA interim authorization from implementing portions of the HSWA program, pending the development of fully equivalent requirements under State law.

Furthermore, if HSWA interim authorization is allowed to lapse on January 1, 1993, there will be confusion among the members of the regulated community due to the shifting of regulatory implementation authority for the affected HSWA program elements from the States to the Federal government. EPA believes that such a lapse would have significant adverse effects on State and Federal relationships, and in the continuity of permitting responsibilities. Therefore, to avoid this disruption, EPA is promulgating this action as an interim final rule. EPA will fully consider any comments on this interim final rule and promulgate a final rule within 120 days affirming or modifying the rule in response to comments received.

HSWA mandated joint EPA/State implementation of hazardous waste management programs to ensure the HSWA requirements were implemented at the same time everywhere. However, the statute maintained the RCRA emphasis on State implementation and provided interim authorization as a mechanism to expedite the transfer of authority to the State. Interim authorization allows a State to maintain its lead role, while it is establishing the stronger, more comprehensive program that is fully equivalent to the Federal requirements. An extension of the interim authorization option will allow States to continue assuming this responsibility.

In the proposed Subpart S rule for corrective action, 55 FR 30798 (July 27, 1990), interim authorization has been cited as the appropriate tool to avoid disruption of State corrective action programs authorized before the issuance of the final subpart S rule. Without interim authorization, EPA would have to step back in immediately to implement the revised HSWA provisions, until the State could demonstrate full equivalence. It is likely that up to fifteen States will be authorized for corrective action by the end of the summer of 1992. The impact of not having this tool available could be even more extensive, however, since the number of States authorized for corrective action is expected to increase steadily in the near future.

The proposed subpart S rule states that Congress clearly did not intend for the authorized State program's authority to return, in part, to EPA every time EPA promulgates a subsequent, more stringent modification or addition to these requirements under HSWA. See

55 FR 30860 (July 27, 1990). Interim authorization was the mechanism designed to prevent this problem.

HSWA interim authorization may prove useful as well for handling the adoption of other future significant additions or revisions to HSWA requirements. When such a situation arises, interim authorization will ensure that authorized States maintain regulatory authority, without the need for EPA to step in to implement the modified provisions. Because interim authorization is designed to respond to changing HSWA requirements, Congress did not want the States to lose this important tool.

Interim authorization can be used in a variety of ways to complement and enhance both State and Federal resources. It can ease State adoption and implementation of amendments to Federal corrective action and other HSWA requirements, without reverting to joint EPA/State implementation. It can provide flexibility in approving State programs which are nearly equivalent to the Federal requirements. By facilitating State program implementation, interim authorization minimizes duplicative activities at the Federal level. For all these reasons, EPA believes that it would be contrary to the public interest to lose the availability of HSWA interim authorization. While providing the benefits previously listed, the extension of the provision will not add any additional costs or burdens to the program.

EPA is designating January 1, 2003 as the new expiration date for HSWA interim authorization because the Agency believes that up to an additional ten years will be needed for State programs to be fully authorized for HSWA. HSWA mandated regulations are currently projected to be promulgated through at least 1988. Based on our experience, States will need additional time to expand their programs and submit them to EPA for approval.

Although we currently believe that a ten year time frame would be most appropriate for HSWA interim authorization, we solicit comment on this issue. Either a shorter or longer time period could be used. If a shorter period is employed, it is likely that EPA would need to seek another extension, as there would not likely be adequate time for the States to adopt all the expected regulatory changes and obtain approval from EPA.

Conversely, EPA cannot predict all the changes that might occur in the long term. There may be additional amendments to the RCRA statute; EPA cannot anticipate the modifications that will be needed to implement those statutory changes. As changes take place, the Agency will consider their impact upon State authorization and make the necessary adjustments. Interim authorization should not be used indefinitely, since the statute, RCRA section 3006(c)(2), requires that the EPA Administrator establish a deadline.

The extension of the availability of interim authorization to States for HSWA regulations shall become effective today. The Agency requests comments on the ten year time frame designated, or other options noted above, for the extension of HSWA interim authorization. EPA will either withdraw the interim final decision or promulgate a final rule by April 19, 1993.

III. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a new regulation is a "major" rule and prepare a Regulatory Impact Analysis in connection with a major rule. A "major" rule is defined as one likely to 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/Tribal, and local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises in domestic or export markets.

This interim final will have none of the above effects. Because this rulemaking does not meet the definition of a major regulation, the Agency is not conducting a Regulatory Impact Analysis at this time. Today's interim final was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

This interim final will not have significant impact on a substantial number of small entities, since the proposal has direct effects only on State Agencies. Therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No new information collection requirements will be imposed by today's interim final. Therefore, an Information Collection Request (ICR) has not been prepared by EPA.

D. Administrative Procedure Act

EPA is invoking the good cause exception in section 553(b)(3) and 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3) and 553(d)(3), to immediately extend the expiration of HSWA interim authorization to January 1, 2003. As discussed above, EPA is taking this action to avoid the disruption and confusion among States and the regulated community that would be caused by reversion to EPA of portions of State programs implementing HSWA requirements under HSWA interim authorization. In addition, EPA is taking this action to maintain the availability of HSWA interim authorization for eligible States, and thereby facilitate State implementation of HSWA requirements while this rulemaking is undergoing public comment.

EPA is today soliciting comments on whether a ten year time frame is appropriate for HSWA interim authorization. The Agency will fully evaluate the comments and withdraw today's rule or promulgate a final rule affirming or modifying the interim final rule in response to comments received.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: December 3, 1992.

William K. Reilly,

Administrator.

For reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 271 is amended as set forth below:

PART 271—[AMENDED]

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

2. Section 271.24 is revised to read as follows:

§ 271.24 Interim authorization under section 3006(g) of RCRA.

(a) Any State which is applying for or has been granted final authorization pursuant to section 3006(b) of RCRA may submit to the Administrator evidence that its program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement identified in § 271.1(j) of this part. Such a State may request interim authorization under section 3006(g) of RCRA to carry out the State requirement in lieu of the Administrator carrying out the Federal requirement.

(b) The applications shall be governed by the procedures for program revisions in § 271.21(b) of this part.

(c) Interim authorization pursuant to this section expires on January 1, 2003.

[FR Doc. 92-30652 Filed 12-17-92; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-38

[FPMR Amendment G-100]

Motor Vehicle Registration, Identification, and Exemptions

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation adds the license plate code MC for the Marine Corps. This new code was requested by the Marine Corps and approved by the General Services Administration. This action will allow the Marine Corps to procure motor vehicle license plates showing the code designation MC.

EFFECTIVE DATE: December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Michael W. Moses, Sr., Fleet Management Division, 703-305-7169.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-38

Motor equipment management.

For the reasons set forth in the preamble, 41 CFR part 101-38 is amended as follows:

PART 101-38—MOTOR EQUIPMENT MANAGEMENT

1. The authority citation for part 101-38 continues to read as follows:

Authority: Sec 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

Subpart 101-38.2—Registration, Identification, and Exemptions

2. Section 101-38.202-4 is revised to read as follows:

§ 101-38.202-4 Numbering and coding.

Official U.S. Government tags, except tags issued by the District of Columbia, Department of Transportation under § 101-38.203-1, shall be numbered serially for each executive agency, beginning with 101, and shall be preceded by a letter code designating the agency having accountability for the motor vehicles as follows:

ACTION	ACT
Agriculture, Department of	A
Air Force, Department of the	AF
Army, Department of the	W
Commerce, Department of	C
Consumer Product Safety Commission.	CPSC
Corps of Engineers, Civil Works	CE
Defense Commissary Agency	DECA
Defense Contract Audit Agency	DA
Defense, Department of	D
Defense Logistics Agency	DLA
District of Columbia Redevelopment Land Agency.	LA
Education, Department of	ED
Energy, Department of	E
Environmental Protection Agency	EPA
Executive Office of the President	EO
Council of Economic Advisers, National Security Council, Office of Management and Budget	
Export-Import Bank of the United States.	EB
Federal Communications Commission.	FC
Federal Deposit Insurance Corporation.	FD
Federal Emergency Management Agency.	FE
Federal Home Loan Bank Board	FB
Federal Mediation and Conciliation Service.	FM
Federal Reserve System	FR
Federal Trade Commission	FT
General Accounting Office	GA
General Services Administration	GS
Government Printing Office	GP
Health and Human Services, Department of.	HHS
Housing and Urban Development, Department of.	H
Interagency Fleet Management System, GSA.	G
Interior, Department of the	I
Interstate Commerce Commission	IC
Judicial Branch of the Government	JB
Justice, Department of	J
Labor, Department of	L
Legislative Branch	LB
Marine Corps	MC
National Aeronautics and Space Administration.	NA
National Capital Housing Authority	NH
National Capital Planning Commission.	NP
National Guard Bureau	NG
National Labor Relations Board	NL
National Science Foundation	NS
Navy, Department of the	N
Nuclear Regulatory Commission	NRC
Office of Personnel Management	OPM
Panama Canal Commission	PC
Railroad Retirement Board	RR
Renegotiation Board	RB
Securities and Exchange Commission	SE
Selective Service System	SS
Small Business Administration	SB
Smithsonian Institution	SI
National Gallery of Art	
Soldiers' and Airmen's Home, U.S.	SH
State, Department of	S
Tennessee Valley Authority	TV
Transportation, Department of	DOT
Treasury, Department of the	T
United States Information Agency	IA
United States Postal Service	P
Veterans Affairs, Department of	VA

Dated: November 2, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92-30596 Filed 12-17-92; 8:45 am]

BILLING CODE 6820-24-M

41 CFR Part 201-38

Management of Telecommunication Resources

CFR Correction

In title 41 of the Code of Federal Regulations, chapter 201 to end, revised as of July 1, 1992, the text appearing on page 48 is correct as published. CFR correction published at 57 FR 56280 through 56284, Nov. 27, 1992 reinstating part 201-38 consisting of §§ 201-38.000 through 201-38.017 and reserved subpart 201-38.1 is withdrawn.

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[PR Docket No. 91-295; RM-7182, FCC 92-534]

Private Land Mobile Radio Services; Additional 72-76 MHz Frequencies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has released a Report and Order that amends Part 90 of its Rules to provide 20 additional frequencies in the 72–76 MHz band for low-power mobile use on a shared basis in the Business, Manufacturers, Petroleum, Power, and Railroad Radio Services. This action will result in less congestion on existing frequencies.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 91–295, adopted November 30, 1992, and released December 14, 1992. The full text 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 be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, telephone (202) 452–1422.

Summary of Report and Order

1. The action taken in the Report and Order creates twenty frequencies in the 74.6–74.8 MHz and 75.2–75.4 MHz bands for low-power mobile use by eligibles in the Business, Manufacturers, Petroleum, Power, and Railroad Radio Services. The frequencies will be limited for use within specific confines appropriate to each eligible radio service and will be subject to the provisions of § 90.257(b)(1) of the Rules that govern the use of 72–76 MHz low-power mobile frequencies.

2. Providing additional 72–76 MHz low-power mobile frequencies for use in the Manufacturers and Railroad Radio Services will relieve the congestion currently being experienced by these services. These frequencies will also provide new spectrum for low-power applications by eligibles in the Power, Petroleum, and Business Radio Services.

Final Regulatory Flexibility Analysis

We certify that the Regulatory Flexibility Act of 1980 does into apply to this rule making proceeding because the adopted rule amendments will not have significant economic impact on small business entities as defined by Section 601(3) of the Regulatory Flexibility Act. No comments were received addressing this certification in the Initial Regulatory Flexibility Analysis contained in the Notice of Proposed Rule Making in this proceeding.

List of Subjects in 47 CFR Part 90

Private land mobile radio, 72–76 MHz frequencies, Radio.

Amendatory Text

47 CFR parts 2 and 90 are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 302, 303 and 307, unless otherwise noted.

2. 47 CFR 2.106 is amended by adding entries in the FCC use designators column for the frequency bands 74.6–74.8 and 75.2–75.4 as listed in the United States table column to read as follows:

§ 2.106 Table of Frequency Allocations.

International table			United States table		FCC use designators	
	*		*	*	*	*
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	*		*	*	*	*
			74.6–74.8 Fixed Mobile 572 US273	74.6–74.8 Fixed Mobile 572 US273	Private Land Mobile (90)	
	*		*	*	*	*
			75.2–75.4 Fixed Mobile 572 US273	75.2–75.4 Fixed Mobile 572 US273	Private Land Mobile (90)	
	*		*	*	*	*

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303 and 332, unless otherwise noted.

4. 47 CFR 90.63 is amended by adding the frequencies 74.61, 74.63, 74.65, 74.67, 74.69, 74.71, 74.73, 74.75, 74.77, 74.79, 75.21, 75.23, 75.25, 75.27, 75.29, 75.31, 75.33, 75.35, 75.37, and 75.39 MHz together with their associated class of station(s) and limitations to the frequency table in paragraph (c), and adding paragraph (d)(27) to read as follows:

§ 90.63 Power Radio Service.

* * * * *

(c) * * *

POWER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* *	* *	*
74.61	do	27
74.63	do	27
74.65	do	27
74.67	do	27
74.69	do	27
74.71	do	27
74.73	do	27
74.75	do	27
74.77	do	27
74.79	do	27
75.21	do	27

POWER RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
75.23	do	27
75.25	do	27
75.27	do	27
75.29	do	27
75.31	do	27
75.33	do	27
75.35	do	27
73.37	do	27
73.39	do	27

* * * * *

(d) * * *

(27) This frequency is available on a shared basis with the Petroleum, Business, Manufacturers, and Railroad Radio Services and interservice coordination is required. All communications on this frequency must be conducted within the boundaries or confines of a power plant, factory, liquified natural gas facility, shipyard, mine, substation, pumping station, or operations control room. Operations on this frequency are subject to the provisions of § 90.257(b). Pulsed modulations will not be authorized.

* * * * *

5. 47 CFR 90.65 is amended by adding the frequencies 74.61, 74.63, 74.65, 74.67, 74.69, 74.71, 74.73, 74.75, 74.77, 74.79, 75.21, 75.23, 75.25, 75.27, 75.29, 75.31, 75.33, 75.35, 75.37, and 75.39 MHz together with their associated class of station(s) and limitations to the frequency table in paragraph (b), and adding paragraph (c)(43) to read as follows:

§ 90.65 Petroleum Radio Service.

* * * * *

(b) * * *

PETROLEUM RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
74.61	do	43
74.63	do	43
74.65	do	43
74.67	do	43
74.69	do	43
74.71	do	43
74.73	do	43
74.75	do	43
74.77	do	43
74.79	do	43
75.21	do	43
75.23	do	43
75.25	do	43
75.27	do	43
75.29	do	43
75.31	do	43
75.33	do	43
75.35	do	43
75.37	do	43

PETROLEUM RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
75.39	do	43

* * * * *

(c) * * *

(43) This frequency is available on a shared basis with the Power, Business, Manufacturers, and Railroad Radio Services and interservice coordination is required. All communications on this frequency must be conducted within the boundaries or confines of a plant, factory, or drilling platform primarily engaged in the production or refining of petroleum products (including natural gas). Operations on this frequency are subject to the provisions of § 90.257(b). Pulsed modulations will not be authorized.

* * * * *

6. 47 CFR 90.75 is amended by adding the frequencies 74.61, 74.63, 74.65, 74.67, 74.69, 74.71, 74.73, 74.75, 74.77, 74.79, 75.21, 75.23, 75.25, 75.27, 75.29, 75.31, 75.33, 75.35, 75.37, and 75.39 MHz together with their associated class of station(s) and limitations to the frequency table in paragraph (b), and adding paragraph (c)(45) to read as follows:

§ 90.75 Business Radio Service.

* * * * *

(b) * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
74.61	do	45
74.63	do	45
74.65	do	45
74.67	do	45
74.69	do	45
74.71	do	45
74.73	do	45
74.75	do	45
74.77	do	45
74.79	do	45
75.21	do	45
75.23	do	45
75.25	do	45
75.27	do	45
75.29	do	45
75.31	do	45
75.33	do	45
75.35	do	45
75.37	do	45
75.39	do	45

* * * * *

(c) * * *

(45) This frequency is available on a shared basis with the Power, Petroleum, Manufacuturers, and Railroad Radio Services and interservice coordination is required. All communications on this frequency must be conducted within the boundaries or confines of the licensee's business premises. Operations on this frequency are subject to the provisions of § 90.257(b). Pulsed modulations will not be authorized.

* * * * *

7. 47 CFR 90.79 is amended by adding the frequencies 74.61, 74.63, 74.65, 74.67, 74.69, 74.71, 74.73, 74.75, 74.77, 74,79, 75.21, 75.23, 75.25, 75.27, 75.29, 75.31, 75.33, 75.35, 75.37, and 75.39 MHz together with their associated class of station(s) and limitations to the frequency table in paragraph (c), and adding paragraph (d)(28) to read as follows:

§ 90.79 Manufacturers Radio Service

* * * * *

(c) * * *

MANUFACTURERS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
74.61	do	28
74.63	do	28
74.65	do	28
74.67	do	28
74.69	do	28
74.71	do	28
74.73	do	28
74.75	do	28
74.77	do	28
74.79	do	28
75.21	do	28
75.23	do	28
75.25	do	28
75.27	do	28
75.29	do	28
75.31	do	28
75.33	do	28
75.35	do	28
75.37	do	28
75.39	do	28

* * * * *

(d) * * *

(28) This frequency is available on a shared basis in the Power, Petroleum, Business, and Railroad Radio Services and interservice coordination is required. All communications on this frequency must be conducted within the boundaries or confines of a plant, factory, shipyard, mill, or other manufacturing area. All operations on this frequency are subject to the provisions of § 90.257(b). Pulsed modulations will not be authorized.

* * * * *

8. 47 CFR 90.91 is amended by adding the frequencies 74.61, 74.63, 74.65, 74.67, 74.69, 74.71, 74.73, 74.75, 74.77, 74.79, 75.21, 75.23, 75.25, 75.27, 75.29, 75.31, 75.33, 75.35, 75.37, and 75.39

MHz together with their associated class of station(s) and limitations to the frequency table in paragraph (b), and adding paragraph (c)(21) to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(b) * * *

RAILROAD RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
74.61	do	21
74.63	do	21
74.65	do	21
74.67	do	21
74.69	do	21
74.71	do	21
74.73	do	21
74.75	do	21
74.77	do	21
74.79	do	21
75.21	do	21
75.23	do	21
75.25	do	21
75.27	do	21
75.29	do	21
75.31	do	21
75.33	do	21
75.35	do	21
75.37	do	21
75.39	do	21
* * * * *		

(c) * * *

(21) This frequency is available on a shared basis in the Power, Petroleum, Business, and Manufacturers Radio Services and interservice coordination is required. All communications must be within the boundaries or confines of railroad terminals or yards. All operations on this frequency are subject to the provisions of § 90.257(b). Pulsed modulations will not be authorized.

* * * * *

9. 47 CFR 90.175 is amended by revising paragraph (f)(3) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(f) * * *

(3) Applications for frequencies in the 72–76 MHz band except for mobile frequencies subject to §§ 90.63(d)(27), 90.65(c)(43), 90.67(c)(34), 90.73(d)(7), 90.75(c)(45), 90.79(d)(4), 90.79(d)(28), 90.91(c)(2) and 90.91(c)(21).

* * * * *

10. 47 CFR 90.257 is amended by revising the introductory sentence of paragraph (b) and the first sentence in paragraph (b)(1) to read as follows:

§ 90.257 Assignment and use of frequencies in the band 72–76 MHz.

* * * * *

(b) The following criteria shall govern the authorization and use of frequencies within the 72–76 MHz band by mobile stations in the Power, Petroleum, Forest Products, Special Industrial, Business, Manufacturers, and Railroad Radio Services.

(1) Mobile operation on frequencies in the 72–76 MHz band (see §§ 90.63(c), 90.65(b), 90.67(b), 90.73(c), 90.75(b), 90.79(c), and 90.91(b)) is subject to the condition that no interference is caused to the reception of television stations operating on Channels 4 and 5. * * *

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–30727 Filed 12–17–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217, 222, and 227

[Docket No. 921184–2284]

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary turtle excluder device (TED) requirement and temporary observer requirement for vessels in the summer flounder trawl fishery and request for comments.

SUMMARY: NMFS will continue to require owners and operators of vessels participating in the trawl fishery for summer flounder from Cape Charles, Virginia, to the southern border of North Carolina, to use a NMFS-approved TED in any net that is rigged for fishing, for a 30-day period starting December 16, 1992, unless exempted from doing so by NMFS. In addition, NMFS, for this period, will continue to require vessels, if requested by the Director, Southeast Region, NMFS, to carry a NMFS-approved observer to monitor compliance with required conservation measures and incidental capture of sea turtles. This action is necessary to protect threatened and endangered sea turtles in the area, and is authorized by 50 CFR 227.72(e)(6). This temporary requirement to use TEDs is necessary to avoid the risk that the summer flounder fishery could jeopardize the continued existence of endangered sea turtles while allowing the fishery to continue. NMFS may extend this requirement beyond 30 days and impose additional temporary sea turtle conservation measures on the fishery for summer flounder as necessary to protect sea turtles.

DATES: This action is effective December 16, 1992, through January 14, 1993. Comments on this action must be received by January 14, 1993.

ADDRESSES: Requests for a copy of the environmental assessment for this action and comments on this action should be addressed to Dr. Michael F. Tillman, Acting Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713–2319), Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region (813/893–3366) or Colleen Coogan, Protected Species Program, NMFS, Northeast Region (508/281–9291).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, U.S.C. 1531 *et seq.* (ESA). According to the National Academy of Sciences, incidental capture in shrimp trawls is by far the leading cause of human-induced mortality to sea turtles in the water, but collectively, activities in non-shrimp fisheries, which includes the summer flounder fishery, constitute the second largest source.

NMFS took emergency action pursuant to 50 CFR 227.72(e)(6)(ii) to require TED use by summer flounder bottom trawlers from November 15, 1992, through December 15, 1992 (57 FR 53603, November 12, 1992). NMFS modified that action to provide the option, for 1 week, to use limited tow times with observers instead of TEDs (57 FR 54533, November 19, 1992). The background and need for these actions was thoroughly discussed in the November 12 and November 19, 1992, **Federal Register** notices and will not be repeated here.

Recent Events

NMFS' continuing review of the available information regarding the temporary TED requirement in the summer flounder bottom trawl fishery indicates that conditions continue to necessitate the use of TEDs. Sea turtles and bottom trawling continue to co-occur in the waters off southern Virginia and North Carolina based on

observations of turtles, both at sea and from strandings on ocean beaches, monitoring of sea surface temperatures, and aerial surveys of fishing activity.

Incomplete reports show that over 94 sea turtles have stranded on ocean beaches from New Jersey through North Carolina from October 29, 1992, through December 9, 1992, coinciding with the operation of the summer flounder fishery, as well as other fisheries, in the mid-Atlantic region. The majority of the strandings (82) occurred in North Carolina. The reporting of sea turtle strandings is not meant to imply that only the summer flounder bottom trawl fishery is responsible, but rather to demonstrate the continued presence of turtles in the region. Other fisheries, including coastal gill net, fly net and long-line fisheries are operating throughout the mid-Atlantic, and are capable of incidentally capturing and killing turtles if no conservation measures are employed. NMFS is working with several states to attempt to assess the impacts of these various fisheries on sea turtles and other protected species. However, NMFS has determined, based on last year's reports from observers on-board summer flounder trawlers, that bottom trawl nets without TEDs capture and kill sea turtles at a rate comparable to that of the shrimp trawl fishery in the south Atlantic, where TED use is now required at all times. Based on this information, when turtles and summer flounder bottom trawling co-occur, the use of TEDs should be a required conservation measure.

Only one unidentified turtle (assumed to be a loggerhead turtle) has been reported captured by a summer flounder trawler during this temporary TED requirement. A NMFS observer, on board a TED-equipped trawler, observed a dead turtle in the net during retrieval, but was unable to retain it for examination because it fell into the water. Based on the advanced state of decomposition of the turtle, it was determined that it had been killed prior to the observed net retrieval.

NMFS and the U.S. Coast Guard are conducting cooperative enforcement activities in the waters off of southern Virginia and North Carolina. NMFS has determined that compliance with the TED use requirement has been very good. Only one violation of the TED requirement, an allegedly restricted escape opening, has been reported during approximately 22 at-sea boardings and continuous shore-based observations and inspections.

NMFS authorized for 1 week the use of limited tow times with observers instead of TEDs (57 FR 54533, November 19, 1992), so that fishermen would have sufficient time to purchase and install TEDs. However, only two fishermen opted to use restricted tow times with an observer. This indicated that TEDs could in fact be purchased and installed in a timely manner, and that the use of TEDs was a more acceptable option than the frequent retrieving and setting of nets necessitated by restricted tow times.

NMFS promulgated final regulations under the Magnuson Fisheries Conservation and Management Act (16 U.S.C. 1801 *et seq.)* (57 FR 57348, December 4, 1992) to require sea turtle protection measures for the summer flounder fishery in a limited area off the coast of North Carolina and southern Virginia during the fall and winter as part of Amendment 2 to the Summer Flounder Fishery Management Plan (FMP) to be codified at 50 CFR 625.72(c). Section 625.72(c) authorizes the Regional Director to impose TED requirements in the fishery. Such action, however, is limited to an area from 3 to 10 nautical miles (5.6 to 18.5 km) measured from the baseline, i.e., from the shoreward boundary of the state territorial sea. NMFS has gathered information during the 1991–1992 season that demonstrates that turtles and trawl fishing co-occur beyond the 10-nautical mile (18.5-km) boundary. NMFS, therefore has determined that the protection provided under Amendment 2 of the FMP is insufficient to protect sea turtles, and that emergency measures implemented under the authority of the ESA are necessary.

Based on continued fishing effort the 1992–1993 season and information previously discussed concerning past and present interactions between sea turtles and the summer flounder fishery, NMFS anticipates that continued unrestricted trawling activities may result in the injury or mortality of loggerhead, Kemp's ridley, green, leatherback, and hawksbill turtles. Therefore, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), extends the requirement to use TEDs in the southern Virginia-North Carolina restricted area, acting pursuant to 50 CFR 227.72(e)(6)(ii).

Comments on the November 15, 1992, Temporary TED-Use Requirement

Comment: NMFS has received a number of complaints from fishermen alleging that TEDs do not work, and that continuation of TED requirements will drive summer flounder fishermen out of business. The most commonly reported problem with TEDs is clogging and bending of bars as a result of encounters with large concentrations of angel sharks, dogfish, puffers, skates, conchs, etc. Fishermen have also complained vigorously about reduced catches of flounder and the loss of large (jumbo) fish.

Response: Allegations that TEDs will not work in the flounder fishery are not supported by the data. In fact, comparative testing of flounder nets with and without TEDs conducted by North Carolina and NMFS during 1992 indicated no significant differences in flounder catch rates or reduction in the size of fish caught. Given this information, NMFS can only conclude that, under normal fishing conditions, TEDs in flounder nets are an effective means of conserving sea turtles with minimal impacts on fishing efficiency.

While NMFS maintains that TEDs are necessary and appropriate in the summer flounder fishery, it acknowledges that large concentrations of bycatch species and debris can pose a problem to fishermen using TEDs. When large schools of some bycatch species have been encountered, TEDs have clogged and the weight of the bycatch has resulted in bending of some TED designs. In other cases, large amounts of bycatch have been released through TEDs, carrying with it large amounts of the target species. This problem does not occur in the majority of the tows, but such events are a legitimate concern to fishermen. Unfortunately, there appears to be no way to predict when and where bycatch concentrations will be encountered.

To help alleviate this problem, NMFS gear specialists are working with fishermen to determine which TEDs operate best under which conditions. Depending on the species of bycatch involved, clogging problems may be eliminated simply by reversing the escape opening of the TED to shoot upward rather than downward. If conchs or debris are the problem, however, a downward shooting TED is probably the best choice. Flounder fishermen may find it necessary to reverse the orientation of TEDs periodically to avoid clogging as bycatch species composition changes.

NMFS is also examining the potential for strengthening some TEDs to better withstand the weight of unusually large catches. Several different designs are currently being investigated, and will be field tested aboard volunteer vessels under actual fishing conditions. NMFS believes that bending problems can be corrected in most cases through use of stronger materials and or bracing (reinforcement) in TED construction.

In summary, TEDs seem to work well in the flounder fishery under normal

fishing conditions. However, when fishermen encounter large concentrations of bycatch species or debris in the course of trawling operations, clogging and bending of some TEDs has been observed. Gear specialists from NMFS and North Carolina are working with commercial flounder trawlers to investigate means of avoiding clogging problems and to increase the strength of existing and several new TEDs.

Comment: The Center for Marine Conservation supported the TED use requirement in the summer flounder fishery, noting that it should have been imposed sooner, that it should be extended an additional 30 days, and that a permanent ESA rule requiring TED use should be promulgated as soon as possible.

Response: NMFS agrees in general with these comments. The November 15, 1992, implementation of the TED-use requirement was based on NMFS' estimation of when summer flounder fishing activities would co-occur this season with turtles in waters off of southern Virginia and North Carolina. The large number of observed strandings prior to the TED-use requirement, while correlated with summer flounder fishing, also took place while other fisheries were operating. It is possible that all of these fisheries, as well as other factors, contributed to the large number of strandings.

Finally, NMFS is considering the imposition of permanent sea turtle conservation requirements for this fishery under the authority of the ESA to be in place for the next fishing season.

Sea Turtle Conservation Measures

Based on the information presented and evidence indicating that the summer flounder trawl fishery takes endangered and threatened sea turtles, the Assistant Administrator has determined that continued action is necessary to conserve sea turtles as authorized by 50 CFR 227.72(e)(6)(ii). The Assistant Administrator has determined that incidental takings of sea turtles during summer flounder fishings are unauthorized unless these takings are consistent with the applicable biological opinions and associated incidental take statements. A biological opinion on the impacts of the summer flounder trawl fishery managed under the FMP and Amendment 2 was issued on August 10, 1992; that incidental take statement allows for the documented lethal take of 18 sea turtles: three in any combination of Kemp's ridley, hawksbill, green, or leatherback sea turtles, and 15 loggerhead turtles.

A new biological opinion was prepared for this action. Authorization for this action differs from the August 10, 1992, authorization by including both lethal takes and takes by injury. Furthermore, while only documented takes will be calculated for vessels using TEDs, takings for vessels that are not using TEDs may be based on direct observations or estimates from other onboard observers, or from other sources, such reported strandings of sea turtles. Finally, if one or more Kemp's ridley, hawksbill, green, or leatherback sea turtle, or three or more loggerhead sea turtles are lethally taken or injured during the 30-day effectiveness period of this action, consultation must be reinitiated.

Requirements

This action is authorized by 50 CFR 227.72(e)(6). The definitions in 50 CFR 217.12, as revised by the final regulations (57 FR 57348, December 4, 1992), are applicable to this action, as well as all relevant provisions in 50 CFR parts 217, 222, and 227. For example, § 227.71(b)(3) provides that it is unlawful to fish for or possess fish or wildlife contrary to a restriction specified or issued under § 227.72(e) (3) or (6). Section 227.72(b)(1) states that it is unlawful to own, operate, or be onboard a vessel, unless that vessel is in compliance with all the applicable provisions of § 227.72(e).

For purposes of this action, the term "Virginia-North Carolina restricted area" means all offshore waters, which are defined to include waters seaward of the COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), bounded on the north by a line along 37°05′ N. latitude (Cape Charles, Va.) and bounded on the south by a line along 33°35′ N. latitude (North Carolina-South Carolina border). A "summer flounder trawl vessel" means any vessel equipped with trawl gear that targets or is capable of taking summer flounder, or any vessel possessing summer flounder that has trawl gear onboard. For the purposes of this action, trawl gear does not include fly nets.

NMFS hereby notifies owners and operators of summer flounder trawl vessels that for a 30-day period, starting December 16, 1992, they must have an approved TED (as defined in 50 CFR 217.12) installed in each net that is rigged for fishing if the vessel is in the Virginia-North Carolina restricted area. For the purpose of this action and notwithstanding 50 CFR 227.72(e)(2)(i), a net is rigged for fishing if it is in the water or if it is shackled, tied, or otherwise connected to any trawl door or board.

The provisions of 50 CFR 227.72(e)(4) and (5), as revised by the final regulations (57 FR 57348, December 4, 1992), are applicable to summer flounder trawl vessels and summer flounder trawl gear as if they were shrimp trawlers or shrimp trawl gear. For purposes of this action, large-mesh webbing may be attached outside of the webbing flap to prevent chaffing on downward shooting TEDs, if it does not interfere or otherwise restrict the turtle escape opening. It is the responsibility of the owner and the operator of any summer flounder trawl vessel to ensure that any sea turtle taken by that vessel is handled and resuscitated in accordance with the requirements specified under 50 CFR 227.72(e)(1) (i) and (ii).

The Assistant Administrator may grant a written waiver of the requirement for a summer flounder trawler to have a TED in its net(s) if that vessel is conducting research operations approved under 50 CFR 227.72(e)(5)(ii) (for further information concerning waivers contact Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, (813/893-3366)). In order for this waiver to be applicable, the written waiver issued by the Assistant Administrator must be carried onboard the vessel at all times that the vessel is in the Virginia-North Carolina restricted area and does not have a TED installed in each of its nets that is rigged for fishing.

The Assistant Administrator may consider the use of restricted tow times instead of TEDs in the future. Any allowance for trawlers to use tow times instead of TEDs may require that the vessel operators carry a NMFS-approved observer at their own expense and limit tow times to no longer than 75 minutes, measured from the time the trawl doors or boards enter the water until they are removed from the water.

NMFS hereby notifies owners and operators of summer flounder trawl vessels that they must carry a NMFS-approved observer onboard such vessel(s) if selected to do so by the Director, Southeast Region, NMFS, upon written notification sent to either the address specified for the vessel in either the NMFS or state fishing permit application, or for registration or documentation purposes, or otherwise served on the owner or operator of the vessel. A summer flounder trawl must comply with the terms and conditions specified in such written notification.

A NMFS-approved observer may be required regardless of whether the

vessel is fishing within the Virginia-North Carolina restricted area and regardless of whether the summer flounder trawl vessel has TEDs installed in its nets if observer information is necessary to document interactions with sea turtles or to determine the effectiveness of conservation measures.

All NMFS-approved observers will report any violations of the conservation measures required by this action, or other applicable regulations and laws; such information can be used for law enforcement purposes.

Any person who does not comply with any requirement in this document, including any term or condition in any written notification issued hereunder, is in violation of the final sea turtle conservation regulations, codified at 50 CFR 227.71(b)(3).

Additional Sea Turtle Conservation Measures

The Assistant Administrator may, at any time, modify the requirements of this action through notification in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator will impose any necessary additional or more stringent measures, if he determines that summer flounder trawl vessels are having a significant adverse effect on sea turtles. Likewise, conservation measures may be modified if the incidental take for the fishery is projected to reach the incidental take level established by the biological opinion for this action issued as a result of consultation under section 7 of the ESA. Additional conservation measures are likely if one or more Kemp's ridley, hawksbill, green, or leatherback sea turtle, or three loggerhead turtles are lethally taken or injured by summer flounder trawlers subject to this notice during the 30-day effectiveness period of this notice.

The Assistant Administrator will impose additional conservation measures on this fishery if the incidental take level is approached or exceeded, or if significant or unanticipated levels of lethal or nonlethal takings or strandings of sea turtles associated with summer flounder fishing activities occur. Such additional measures may expand the restricted area or the time during which TEDs are required or impose requirements to take NMFS-approved observers at the expense of vessel owners or operators. The Assistant Administrator may withdraw or modify the requirement for specific conservation measures or any restriction on fishing activities if the Assistant Administrator determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of the 30-day requirement to use TEDs in summer flounder trawls, will be published in the **Federal Register**.

Classification

The Assistant Administrator has determined that this action is necessary to respond to an emergency situation to protect listed sea turtles, and is consistent with the ESA and other applicable law. This action does not require a regulatory impact analysis under E.O. 12291 because it is not a "major rule."

The Assistant Administrator, pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), finds there is good cause to take this action without full notice and full public procedure thereon. The Assistant Administrator finds that full notice and full public procedure thereon is unnecessary, impracticable, and contrary to the public interest. Comments were requested on the initial emergency action (57 FR 53603, November 12, 1992), and have been responded to herein. The continued co-occurrence of sea turtles and summer flounder fishing effort off southern Virginia and North Carolina makes delay for further public comment inconsistent with the need to take action to insure that the activities of the summer flounder fishery are not likely to jeopardize the continued existence of sea turtles. Delay in imposing a TED requirement is likely to result in further takings of sea turtles by the summer flounder fishery, which could result in closure of the fishery.

In addition, the Assistant Administrator has determined that good cause exists to reduce the 30-day delayed effective date otherwise required by section 553(d) of the APA. Good cause exists because of the continued need to protect sea turtles, which makes it impracticable and contrary to the public interest to delay the effective date beyond December 16, 1992. Further, TEDs have been required in the summer flounder fishery off southern Virginia and North Carolina since November 15, 1992. To help the fishery use TEDs during this fishing season, NMFS, in cooperation with North Carolina and the summer flounder fishing industry, has conducted four workshops on TEDs and the requirements of the sea turtle conservation regulations, participated in a series of gear evaluation cruises, provided alternative TED designs and technical assistance for TED testing by cooperating flounder trawlers, and provided direct TED technology transfer assistance to fishermen. These research and technology transfer efforts are ongoing.

Because neither section 553 of the APA nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for the final rule (57 FR 57348, December 4, 1992). A supplemental EA prepared specifically for this action concludes that this action will have no significant impact on the human environment and is available from NMFS (see **ADDRESSES**).

Dated: December 15, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries.

[FR Doc. 92-30776 Filed 12-15-92; 3:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 244
Friday, December 18, 1992

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

Agricultural Marketing Service

7 CFR Part 1250

[Docket No. PY-91-002]

RIN 0581-AA59

Amendments to Egg Research and Promotion Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Egg Research and Promotion Rules and Regulations by adding a late-payment charge on all delinquent assessments. The American Egg Board approved this change at its July 17-18, 1991, meeting, and has since requested the Secretary to amend the Rules and Regulations accordingly.

A late-payment charge of 1.5 percent per month would be levied on all assessment charges more than 30 days past due. This change is proposed in order to facilitate the Board's efforts to make timely collections.

DATES: Comments must be received on or before January 19, 1993.

ADDRESSES: Written comments are to be mailed to Janice L. Lockard, Chief, Standardization Branch, Poultry Division, AMS, USDA, Room 3944-South, P.O. Box 96456, Washington, DC 20090-6456. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. State that your comments refer to Docket No. PY-91-002.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202-720-3506.

SUPPLEMENTARY INFORMATION:

Executive Orders 12291 and 12778 and Regulatory Flexibility Act

This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Department Regulation 1512-1 and has been classified a "non-major" rule under the criteria contained therein. It will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or will not have a significant impact on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 14 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provisions of such order or any obligations imposed in connection with such order are not in accordance with law; and requesting a modification of the order or an exemption therefrom. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint is filed within 20 days after date of the entry of the ruling.

The AMS Administrator has determined that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information collection requirements and recordkeeping provisions contained in 7 CFR part 1250 have been approved by the Office of Management and Budget and assigned OMB Control No. 0581-0098 under the Paperwork Reduction Act of 1980.

Background and Proposed Changes

The Rules and Regulations in § 1250.517 require egg handlers to pay assessments on a monthly basis. Assessments are due and collectable on or before the 15th day after the end of the reporting period. It is incumbent upon the Board's compliance department to ensure that such payments are made. However, some handlers continually remit assessments after they are due or, in some cases, refuse to pay at all.

Since the Board relies on a predictable income to fund ongoing projects, an additional mechanism is needed to facilitate the Board's efforts with regard to the timely remittance of assessments. Other commodity research and promotion boards have found that late-payment charges have been effective in facilitating timely payment of assessments. The Board has recommended the addition of such a charge and, similar to regulations governing other like programs, requested that a late-payment charge of 1.5 percent per month be incorporated into the Rules and Regulations.

List of Subjects in 7 CFR Part 1250

Agricultural research, Egg and egg products.

For the reasons set forth in the preamble, title 7, CFR part 1250 is proposed to be amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation of part 1250 continues to read as follows:

Authority: Pub. L. 93-428, 88 Stat. 1171, as amended, 7 U.S.C. 2701-2718.

2. A new § 1250.519 is added to read as follows:

§ 1250.519 Late-payment charge.

Any unpaid assessments due to the Board pursuant to § 1250.347 shall be increased by a late-payment charge of 1.5 percent each month beginning with the day following the date such assessments are 30 days past due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. Assessments that are not paid when due because of a person's failure to submit a handler report to the Board as required shall accrue late-payment charges from the time such assessments should have been remitted. The timeliness of a payment to

the Board shall be based on the applicable postmark date or the date payment is actually received by the Board, whichever is earlier.

Dated: December 10, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-30692 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 357

RIN 3064-AA97

Determination of Economically Depressed Regions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to amend its rule, which designates certain "economically depressed regions," by revising the rule to designate different economically depressed regions in light of current economic conditions. The FDIC is required by law to consider proposals for direct financial assistance by Savings Association Insurance Fund members having offices located in an "economically depressed region" and meeting certain other specified criteria, before grounds exist for the appointment of a conservator or receiver for the institution. The proposed rule reflects the FDIC's most recent periodic review and reasonable application of the factors the FDIC considers in determining which regions are economically depressed.

DATES: Comments must be received by February 16, 1993.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room 400, 1776 F Street, NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898-3838.) Comments may be inspected in the FDIC's Reading Room, room 7118, 550 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Jaske, Financial Economist, Financial and Industry Analysis Section, Division of Research and Statistics, (202) 898-6549, FDIC, 550 17th Street, NW., Washington, DC 20429; or Sandra Comenetz, Senior Attorney, Legal Division, (202) 898-3582, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposed rule does not require any collections of paperwork pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule does not impose regulatory compliance requirements on depository institutions of any size.

Discussion

The FDIC has authority under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)) (FDI Act) to provide financial assistance to prevent the default of an insured depository institution. Under section 13(k)(5) of the FDI Act (12 U.S.C. 1823(k)(5)), the FDIC must consider proposals for eligible Savings Association Insurance Fund (SAIF) member institutions to receive assistance pursuant to section 13(c) before grounds exist for the appointment of a conservator or receiver for the institution. Section 13(k)(5) establishes nine criteria for such eligibility. One of the criteria is that an institution's offices must be located in an "economically depressed region." In addition, under section 13(k)(5), SAIF member applicants must separately meet the fourteen criteria under section 13(c) to qualify for assistance. However, assistance proposals with respect to SAIF member institutions under section 13(k)(5) that do not meet all nine of the criteria set forth in section 13(k)(5) may nevertheless be submitted to the FDIC for consideration under section 13(c). Thus, institutions whose offices are not located in an "economically depressed region" under section 13(k)(5) are not precluded from proposing and receiving open institution assistance.

The term "economically depressed region" is defined in section 13(k)(5)(C) to mean any geographical region which the [FDIC] determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices.

On September 17, 1990, the FDIC issued a final rule (55 FR 38043) codified at 12 CFR 357.1, which determined that certain geographical regions were "economically depressed regions" for purposes of section 13(k)(5) of the FDI Act. In determining which regions were economically depressed, the FDIC considered the following factors: (1) The ratio of poor quality real estate assets to total assets in the portfolios of banks; (2) the ratio of poor quality real estate assets to total assets in the portfolios of SAIF members; and (3) unemployment figures. The statewide percentages of impaired real estate assets for banks and SAIF members and unemployment rates were analyzed with reference to national levels. These factors are subject to periodic review and application by the FDIC in light of changing economic conditions.

The FDIC's final rule designated eight individual states as "economically depressed regions" for purposes of section 13(k)(5) of the FDI Act. They were: Alaska, Arizona, Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, and Texas.

Having examined real estate and employment conditions based on the most recent information, the FDIC has determined that the eight states previously designated as "economically depressed regions" should no longer receive that designation. The FDIC has concluded that ten different states should now be classified as "economically depressed regions." These are California, Connecticut, the District of Columbia, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

To determine which regions are economically depressed in light of current economic conditions, the FDIC considered, as before, the ratio of poor quality real estate assets to total assets in the portfolios of banks and SAIF members, and the unemployment situation. The FDIC considered both the overall unemployment rate and the non-farm employment growth rate, the latter of which can provide an indication of a change in the employment situation.

The FDIC intends to revisit annually the criteria used to identify regions for designation as "economically depressed regions," as well as the list of regions so designated, and may make revisions as circumstances warrant.

List of Subjects in 12 CFR Part 357

Bank deposit insurance, Grant programs—Housing and Community Development, Savings associations.

For the reasons set forth in the preamble, part 357 of Chapter III of Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 357—DETERMINATION OF ECONOMICALLY DEPRESSED REGIONS

1. The authority citation for part 357 is revised to read as follows:

Authority: 12 U.S.C. 1819, 1823(k)(5).

2. Section 357.1 is amended by revising paragraph (b) to read as follows:

§ 357.1 Economically depressed regions.

* * * * *

(b) *Economically depressed regions.* The FDIC has determined that the following geographical regions are "economically depressed regions" for purposes of section 13(k)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)(5)): California, Connecticut, the District of Columbia, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont,

By order of the Board of Directors.

Dated at Washington, DC this 8th day of December, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-30672 Filed 12-17-92; 8:45 am]

BILLING CODE 6714-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration.

ACTION: Proposed rule; withdrawal of earlier proposed rule; correction.

SUMMARY: This document contains corrections to proposed part 707 of the NCUA Rules and Regulations, published November 30, 1992 (57 FR 56686). The proposed regulation will implement the Truth in Savings Act, which requires credit unions to disclose fees, dividend rates and other terms concerning deposit accounts, and limits the methods by which credit unions determine the balance on which dividends are calculated.

FOR FURTHER INFORMATION CONTACT: Margaret R. Suuberg, Staff Attorney, or Martin E. Conrey, Staff Attorney, National Credit Union Administration, 1776 G St., NW., suite 600, Washington, DC 20456, or telephone (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Background

NCUA's proposed part 707, which is the subject of these corrections, will implement the Truth in Savings Act (12 U.S.C. 4301 et seq., contained in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Stat. 2236).

Need for Correction

As published, appendix A to the proposed regulation contains ten drafting errors that are confusing and should be clarified. An error in the supplementary information that may be confusing is also being corrected at this time.

Correction of Publication

For the reasons set forth in the preamble, the publication on November 30, 1992 of the proposed regulation in the **Federal Register** is corrected as follows.

1. On page 56691, in the third column, under the heading "Paragraph (u)—Rollback Account", in the first paragraph, the last sentence, the citation "§ 707.4(b)(2)(ii)" is corrected to read "§§ 707.4(b)(2)(iii) and 707.4(b)(3)(ii)(B)".

Appendix A [Corrected]

2. On page 56716, in the second column, under the heading "A. General Rules", in the second paragraph, the first sentence, the formula "APY=100 [(1+Dividends/Principal) $^{(365/\text{Days in term})}$–1]"

3. On page 56716, in the second column, under the subheading "Examples", in the first example, the first sentence, the formula "APY=100 [(1+61.68/1,000 $^{(365/365)}$–1]".

4. On page 56716, at the top of the third column, under the subheading "Examples", in the second example, the first sentence, the formula "APY=[(1+30.37/1,000) (365/182)–1]" is corrected to read "APY=[(1+30.37/1,000) $^{(365/182)}$–1]".

5. On page 56716, in the third column, under the heading "B. Stepped-Rate Accounts (Different Rates Apply in Succeeding Periods)", under the subheading "Examples", in the first example, the first sentence, the formula "APY=100 [(1+26.10/1,000) (365/183)–1]" is corrected to read "APY=100 [(1+26.10/1,000) $^{(365/183)}$–1]".

6. On page 56716, in the third column, under the heading "B. Stepped-Rate Accounts (Different Rates Apply in Succeeding Periods)", under the subheading "Examples", in the second example, the first sentence, the formula "APY=100 [(1+133.13/1,000) (365/730)–1]" is corrected to read "APY=100 [(1+133.13/1,000) $^{(365/730)}$–1]".

7. On page 56717, in the first column, under the heading "D. Accounts with Tiered Rates (Different Rates Apply to Specified Balance Level)", under the subheading "Tiering Method A", in the fourth paragraph beginning "First Tier", the second sentence, the formula "APY=100 [(1+53.90/1,000) (365/365)–1]" is corrected to read "APY=100 [(1+53.90/1,000) $^{(365/365)}$–1]".

8. On page 56717, in the third column, under the heading "Part II. Annual Percentage Yield Earned for Periodic Statements", in the third paragraph, the first sentence, the formula "APY Earned=100 [(1+Interest earned/Balance) (365/Days in period)–1]" is corrected to read "APY Earned=100 [(1+Interest earned/Balance) $^{(365/\text{Days in period})}$–1]".

9. On page 56718, in the first column, under the heading "Part II. Annual Percentage Yield Earned for Periodic Statements", under the subheading "Examples", in the first example, the third sentence, the formula "APY Earned=100 [(1+5.25/1,000) (365/30)–1]" is corrected to read "APY Earned=100 [(1+5.25/1,000) $^{(365/30)}$–1]".

10. On page 56718, in the first column, under the heading "Part II. Annual Percentage Yield Earned for Periodic Statements", under the subheading "Examples", in the second example, the fifth sentence "The annual percentage yield earned (using the formula above) is 6.69%:

APY Earned=100 [(1+6.50/1,500) (365/30)–1]

APY Earned=6.69%" is corrected to read "The annual percentage yield earned (using the formula above) is 5.40%:

APY Earned=100 [(1+6.50/1,500) $^{(365/30)}$–1]

APY Earned=5.40%".

11. On page 56718, in the first column, under the heading "Part II. Annual Percentage Yield Earned for Periodic Statements", under the subheading "Examples", in the third example, the fifth sentence, the formula "APY Earned=100 [(1+21/2,000) (365/91)–1]" is corrected to read "APY Earned=100 [(1+21/2,000) $^{(365/91)}$–1]".

By the National Credit Union Administration Board on December 11, 1992.

Hattie M. Ulan,

Acting Secretary of the Board.

[FR Doc. 92-30642 Filed 12-17-92; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-163-AD]

Airworthiness Directives; Aerospatiale Model ATR42-300 Series Airplanes, and Model ATR72-100 and -200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR42-300 series airplanes, and all Model ATR72-100 and -200 series airplanes. This proposal would require replacement of certain electrical push button switches which control the cabin pressurization valves and attach the emergency battery to the standby bus. This proposal is prompted by reports of faulty electrical push button switches. The actions specified by the proposed AD are intended to prevent failure of the pressurization valves to close in the event of ditching, and to prevent interruption of electrical power to certain electrical equipment used during approach and landing.

DATES: Comments must be received by February 3, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-163-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

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 shall identify the Rules Docket 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 before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the 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.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-163-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-163-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Aerospatiale Model ATR42-300 series airplanes, and all Model ATR72-100 and -200 series airplanes. The DGAC advises that cases recently have been reported of faulty electrical push button switches which, when pushed, failed to latch in the "on" position. These switches are used to control the cabin pressurization valves, and also to attach the emergency battery to the standby bus. In the event of an airplane ditching situation, a failed switch could prevent closure of the pressurization valves, which could result in water entering the fuselage. A failed switch could also interrupt electrical power to certain electrical equipment used during approach and landing.

The faulty electrical switches, part numbers 9PD and 12HM, originated from one batch and have electro-engraved date codes of A6, A7, A8, A9, AO, AN, AD, B1, B2, B3, B4, B5, B6, or B7.

Aerospatiale has issued Service Bulletins ATR42-31-0023 and ATR72-31-1006, both dated May 15, 1992, which describe procedures for replacement of certain electrical push button switches which control the cabin pressurization valves and attach the emergency battery to the standby bus. The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directives 92-122-047(B) and 92-123-013(B), both dated May 27, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of certain electrical push button switches which control the cabin pressurization valves and attach the emergency battery to the standby bus. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,740, or $220 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order

12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules 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, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket 92-NM-163-AD.

Applicability: All Model ATR42-300 series airplanes, and all Model ATR72-100 and -200 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pressurization valves to close in the event of ditching, and to prevent interruption of electrical power to certain electrical equipment used during approach and landing, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove the electrical switches, part numbers 9PD and 12HM, and identify the date codes in accordance with Aerospatiale Service Bulletin ATR42-31-0023, dated May 15, 1992 (for Model ATR42-300 and -320 series airplanes); or Aerospatiale Service Bulletin ATR72-31-1006, dated May 15, 1992 (for Model ATR72-100 and -200 series airplanes); as applicable.

(1) If the date code is identified as A6, A7, A8, A9, AO, AN, AD, B1, B2, B3, B4, B5. B6, or B7, prior to further flight, replace the currently-installed switch with a serviceable switch marked with a date code other than those listed above.

(2) If the date code is other than those listed in paragraph (a)(1) of this AD, reinstall the switch. No further action is necessary.

(b) As of the effective date of this AD, no person shall install an electrical switch, part numbers 9PD and 12HM, having a date code of A6, A7, A8, A9, AO, AN, AD, B1, B2, B3, B4, B5, B6, or B7, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

Issued in Renton, Washington, on December 2, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 92-30627 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-112-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes Equipped with General Electric (GE) Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300 series airplanes. This proposal would require repetitive visual and eddy current inspections to detect wear or cracks of the inner doublers on the pylon side panel around the fire extinguisher access doors, and replacement of worn or cracked parts, if necessary. This proposal is prompted by reports that wear marks have been detected on the inner doubler of the pylon side panel around the fire extinguisher bottle access doors. The actions specified by the proposed AD are intended to prevent cracks from developing in the pylon side panel, which would result in reduced structural integrity of the engine pylon.

DATES: Comments must be received by February 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-112-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98056-4056; telephone (206) 227-2140; fax (206) 227-1320.

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 shall identify the Rules Docket 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 before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the 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.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-112-AD." The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-112-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A300 B2-1C, B2-203, B2K-3C, B4-2C, B4-103, and B4-203 series airplanes equipped with GE engines. The DGAC advises that numerous cases have been reported of wear marks found on the inner doubler of the pylon side panel around fire extinguisher bottle access doors 484AR and 473AL. These wear marks are the result of a high level of vibration, that has caused the door latches to chafe against the doubler (especially the version of the doors configured with 3 and 4 latches). When not repaired, these wear marks could develop into cracks. If not detected and corrected in a timely manner, such cracks could reach a certain length and spread quickly to the side panel. This condition would reduce the structural integrity of the engine pylon.

Airbus Industrie has issued Service Bulletin A300-54-070, Revision 1, dated March 17, 1992, which describes procedures for repetitive visual and eddy current inspections to detect wear or cracks of the inner doubler on the pylon side panel around the fire extinguisher access doors and replacement of the doubler, if necessary. The areas to be inspected and the recommended intervals for the repetitive visual and eddy current inspections and doubler replacement vary, depending upon the airplane's configuration. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 90-082-131(B), dated April 1, 1992, in order to assure the continued airworthiness of these airplanes in France.

Airbus Industrie has also issued Service Bulletin A300-54-046, dated June 24, 1982, and Change Notice, dated July 8, 1985, which describe procedures for modification of the locking system on fire extinguisher access doors. The latches are removed and replaced by a screw attachment system. The DGAC has not classified this service bulletin and change notice as mandatory.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the French DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive visual and eddy current inspections to detect wear or cracks of the inner doubler on the pylon side panel around the fire extinguisher access doors, and replacement of worn or cracked parts, if necessary. The actions would be required to be accomplished in accordance with the service bulletins and change notice described previously. An optional terminating action is also provided which, if accomplished, would eliminate the need for repetitive visual and eddy current inspections.

The FAA considers three criteria for those situations where repetitive inspections of a crack-prone area may be permitted to continue indefinitely, even though a positive fix to the problem exists: (1) the area is easily accessible, (2) the cracking is easily detectable, and (3) the consequences of the cracking are not likely to be catastrophic. In consideration of the cracking that may occur on the inner doubler on the pylon side panel around the fire extinguisher access doors, the FAA has determined that the crack-prone area addressed by this proposal meets these three criteria and that the circumstances warrant the allowance of continued repetitive inspections in lieu of a mandated design modification.

The FAA estimates that 77 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $35,998, or $468 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules 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, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AIRWORTHINESS DIRECTIVES]

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 92-NM-112-AD.

Applicability: Model A300 B2-1C, B2-203, B2K-3C, B4-2C, B4-103, and B4-203 series airplanes; equipped with General Electric (GE) engines on which engine Pylon Modification No. 2434, as described in Airbus Industrie Service Bulletin A300-54-070, Revision 1, dated March 17, 1992, has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the engine pylon, accomplish the following:

(a) Prior to the accumulation of 22,400 total hours time-in-service, or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later, perform an initial visual and eddy current inspection to

detect wear or cracks of the inner doubler on the pylon side panel around the fire extinguisher access doors, in accordance with Airbus Industrie Service Bulletin A300-54-070, Revision 1, dated March 17, 1992. If cracks are detected, prior to further flight, accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) If cracks less than 5 mm (0.197 inch) are detected, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(2) If cracks greater than or equal to 5 mm (0.019 inch) are detected, accomplish either paragraph (a)(2)(i) or (a)(2)(ii), as applicable:

(i) For airplanes on which the modification described in Service Bulletin No. A300-54-046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD.

(ii) For airplanes on which the modification described in Service Bulletin No. A300-54-046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after replacement of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD; and repeat those inspections thereafter in accordance with paragraphs (b), (c), (d), or (e) of this AD, as applicable.

(b) For airplanes having Configuration No. 1.A.: Repeat the visual and eddy current inspections to detect doubler wear and cracks, as required by paragraph (a) of this AD, in accordance with Airbus Industrie Service Bulletin A300-54-070, Revision 1, dated March 17, 1992, as follows:

(1) No further action is necessary for the following airplanes:

(i) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300-54-046 (screwed doors) has been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.5 mm (0.019 inch).

(ii) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300-54-046 (screwed doors) has not been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.1 mm (0.004 inch).

(2) For airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300-54-046 (screwed doors) has not been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than to 0.1 mm (0.004 inch) and less than 0.5 mm (0.019 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,400 hours time-in-service.

Note: Subsequent action to be taken (repetitive inspections or inner doubler replacement) will depend upon the "worst finding," defined as the area with the largest amount of measured doubler wear.

(3) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 0.5 mm (0.019 inch) and less than 2 mm (0.078 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,400 hours time-in-service.

(4) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 2 mm (0.078 inch) and less than 4 mm (0.157 inch): Repeat the visual and eddy current inspections at intervals not to exceed 1,800 hours time-in-service.

(5) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 4 mm (0.157 inch) and less than 6 mm (0.236 inch): Accomplish either paragraph (b)(5)(i), (b)(5)(ii), or (b)(5)(iii) of this AD.

(i) Repeat the visual and eddy current inspection at intervals not to exceed 350 hours time-in-service. Or

(ii) If the modification described in Service Bulletin No. A300-54-046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD. Or

(iii) If the modification described in Service Bulletin No. A300-54-046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after replacement of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD, and repeat those inspections thereafter in accordance with paragraph (b) of this AD.

(6) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 6 mm (0.236 inch): Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(c) For airplanes having Configuration No. 1.B: Repeat the visual and eddy current inspections for doubler wear and cracks, as required by paragraph (a) of this AD, in accordance with Airbus Industrie Service Bulletin A300-54-070, Revision 1, dated March 17, 1992, as follows:

(1) No further action is necessary for the following airplanes:

(i) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300-54-046 (screwed doors) has been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.5 mm (0.019 inch).

(ii) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300-54-046 (screwed doors) has not been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.1 mm (0.004 inch).

(2) For airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300-54-046 (screwed doors) has not been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than to 0.1 mm (0.004 inch) and less than 0.5 mm (0.019 inch): Repeat the visual and eddy current inspections at intervals not to exceed 3,400 hours time-in-service.

Note: Subsequent action to be taken (repetitive inspections or inner doubler replacement) will depend upon the "worst finding," defined as the area with the largest amount of measured doubler wear.

(3) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 0.5 mm (0.019 inch) and less than 2 mm (0.078 inch): Repeat the visual and eddy current inspections at intervals not to exceed 3,400 hours time-in-service.

(4) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 2 mm (0.078 inch) and less than 4 mm (0.157 inch): Accomplish either paragraph (c)(4)(i), (c)(4)(ii), or (c)(4)(iii) of this AD.

(i) Repeat the visual and eddy current inspection at intervals not to exceed 300 hours time-in-service. Or

(ii) If the modification described in Service Bulletin No. A300-54-046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD. Or

(iii) If the modification described in Service Bulletin No. A300-54-046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after the replacement date of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD, and repeat those inspections thereafter in accordance with paragraph (c) of this AD.

(5) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than or equal to 4 mm (0.157 inch): Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(d) For airplanes having Configuration No. 1.A. on which the modification described in Airbus Industrie Service Bulletin No. A300-54-008 (door with 4 latches) has been accomplished; and for airplanes having Configuration No. 2.A.: Repeat the visual and eddy current inspections for doubler wear and cracks at zones D1, D2, D3, and D4, as required by paragraph (a) of this AD, in accordance with Airbus Service Bulletin A300-54-070, Revision 1, dated March 17, 1992, as follows:

(1) No further action is necessary for the following airplanes:

(i) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300-54-046 (screwed doors) has been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.5 mm (0.019 inch).

(ii) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300-54-046 (screwed doors)

has not been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.1 mm (0.004 inch).

(2) For airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than to 0.1 mm (0.004 inch) and less than or equal to 0.5 mm (0.019 inch): Repeat the visual and eddy current inspections at intervals not to exceed 5,800 hours time-in-service.

Note: Subsequent action to be taken (repetitive inspections or inner doubler replacement) will depend upon the "worst finding," defined as the area with the largest amount of measured doubler wear.

(3) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 0.5 mm (0.019 inch) and less than 2 mm (0.078 inch): Repeat the visual and eddy current inspections at intervals not to exceed 5,800 hours time-in-service.

(4) For airplanes the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 2 mm (0.078 inch) and less than 4 mm (0.157 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,300 hours time-in-service.

(5) For airplanes on which the modification described in Service Bulletin No. A300–54–046 (screwed doors) has been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 4 mm (0.157 inch) and less than 6 mm (0.236 inch): Repeat the visual and eddy current inspection at intervals not to exceed 2,300 hours time-in-service.

(6) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 6 mm (0.236 inch) and less than 8 mm (0.315 inch): Accomplish either paragraph (d)(6)(i), (d)(6)(ii), or (d)(6)(iii), of this AD.

(i) Repeat the visual and eddy current inspections at intervals not to exceed 450 hours time-in-service. Or

(ii) If the modification described in Service Bulletin No. A300–54–046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD. Or

(iii) If the modification described in Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after replacement of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD, and repeat those inspections thereafter in accordance with paragraph (d) of this AD.

(7) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than or equal to 8 mm (0.315 inch): Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(e) For airplanes having Configuration No. 1.B. on which the modification described in Service Bulletin No. A300–54–008 (door with 4 latches) has been accomplished; and for airplanes having Configuration No. 2.B.: Repeat the visual and eddy current inspections for doubler wear and cracks at zones D1, D2, D3, and D4, as required by paragraph (a) of this AD, in accordance with Airbus Service Bulletin A300–54–070, Revision 1, dated March 17, 1992, as follows:

(1) No further action is necessary for the following airplanes:

(i) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.5 mm (0.019 inch).

(ii) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.1 mm (0.004 inch).

(2) For airplanes on which the modification described in Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 0.1 mm (0.004 inch) and less than 0.5 mm (0.019 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,500 hours time-in-service.

Note: Subsequent action to be taken (repetitive inspections or inner doubler replacement) will depend upon the "worst finding," defined as the area with the largest amount of measured doubler wear.

(3) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 0.5 mm (0.019 inch) and less than 2 mm (0.078 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,500 hours time-in-service.

(4) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 2 mm (0.078 inch) and less than 4 mm (0.157 inch): Repeat the visual and eddy current inspections at intervals not to exceed 3,300 hours time-in-service.

(5) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 4 mm (0.157 inch) and less than 6 mm (0.236 inch): Repeat the visual and eddy current inspections at intervals not to exceed 1,800 hours time-in-service.

(6) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 6 mm (0.236 inch) and less than 8 mm (0.315 inch): Accomplish either paragraph (e)(6)(i), (e)(6)(ii), or (e)(6)(iii) of this AD.

(i) Repeat the visual and eddy current inspections at intervals not to exceed 400 hours time-in-service. Or

(ii) If the modification described in Service Bulletin A300–54–046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD. Or

(iii) If the modification described in Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after replacement of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD, and repeat those inspections thereafter in accordance with paragraph (e) of this AD.

(7) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than or equal to 8 mm (0.315 inch): Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(f) Accomplishment of the replacement of the inner doubler on the pylon side panel around the fire extinguisher access doors, and installation of the modification (screwed doors), as described in Airbus Service Bulletin No. A300–54–046, dated June 24, 1982, and Change Notice, dated July 8, 1985, constitutes terminating action for the visual and eddy current inspections required by this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on December 11, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–30646 Filed 12–17–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–184–AD]

Airworthiness Directives; AMI Industries, Inc., Pilot and Co-Pilot Seats, Model 1108, as Installed in, but not Limited to, de Havilland Model DHC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain AMI Industries, Inc., pilot and co-pilot seats. This proposal would require replacement of lap belt attachment links for certain pilot and co-pilot seats. This proposal is prompted by a report that a lap belt link fitting failed due to fatigue. The actions specified by the proposed AD are intended to prevent failure of the pilot's and co-pilot's lap belts during air turbulence, which could lead to reduced ability of the pilots to control the airplane.

DATES: Comments must be received by February 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-184-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AMI Industries, Inc., 1275 North Newport Road, Colorado Springs, Colorado 80916. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Pliny Brestel, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2783; fax (206) 227-1181.

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 shall identify the Rules Docket 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 before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the 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.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-184-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-184-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has been advised that a lap belt link fitting installed in a pilot or co-pilot seat on a de Havilland Model DHC-8 series airplane failed recently due to fatigue. Such failure could cause the lap belts to become unattached and, therefore, unable to restrain the pilot and co-pilot in their seats during turbulent air conditions. This condition, if not corrected, could lead to reduced ability of the pilots to control the airplane.

The FAA has reviewed and approved AMI Industries, Inc., Service Bulletin 25-1108-03, dated May 20, 1992, that describes procedures for replacement of lap belt attachment links for certain pilot and co-pilot seats with an improved lap belt attachment link kit. The modification has been designed to improve reliability of the lap belt attachment links and thereby reduce fatigue and possible breakage.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of lap belt attachment links for certain pilot and co-pilot seats with an improved lap belt attachment link kit. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This modification has already been incorporated in production on de Havilland Model DHC-8 series airplanes equipped with AMI Industries, Inc., pilot and co-pilot seats, Model 1108, having serial numbers 190 and subsequent. Therefore, the applicability of the proposal would include only those seats having serial numbers 004 to 189, inclusive.

The actual number of pilot and co-pilot seats of the affected design in the worldwide fleet is not known. However, the FAA is aware that the subject seats may be installed in, but not limited to, de Havilland Model DHC-8 series airplanes. There are approximately 109 of these airplanes in the worldwide fleet; of this number, the FAA estimates that 85 airplanes are of U.S. registry. It would take approximately 1 work hour per airplane to accomplish the proposed actions, at an average labor rate of $55 per work hour. Required parts would be supplied by the parts manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $55 per airplane. For U.S. operators of Model DHC-8 series airplanes, these figures translate to a total cost impact of $4,675. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules 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, Aircraft, Aviation safety, Safety

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AMI Industries, Inc.: Docket 92-NM-184-AD.

Applicability: Pilot and Co-Pilot Seats, Model 1108, serial numbers 004 to 189, inclusive; as installed in, but not limited to de Havilland Model DHC-8 series airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pilot's and co-pilot's lap belts during air turbulence, which could lead to reduced ability of the pilots to control the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, remove the lap belt attachment links and install the improved lap belt attachment link kit, P/N 1B9014-3R, in accordance with AMI Industries, Inc., Service Bulletin 25-1108-03, dated May 20, 1992.

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

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

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

Issued in Renton, Washington, on December 11, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-30645 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1311

Registration and Reregistration Application Fees

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to adjust the current application fee schedule for DEA registration to adequately recover the Federal costs associated with the Diversion Control Program as mandated in the Department of Justice and Related Agencies Appropriations Act, 1993 (section 111 (b), Pub. L. 102-395).

DATES: Comments and objections must be submitted by January 19, 1993.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537 Attention: Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Mr. Terrance Woodworth, Chief, Drug Operations Section, Office of Diversion Control, Washington, DC 20537, Telephone (202) 307-8569.

SUPPLEMENTARY INFORMATION: The Department of Justice and Related Agencies Appropriations Act, 1993 (Pub. L. 102-395) requires that the Drug Enforcement Administration (DEA) collect fees to ensure the recovery of the full costs of operating the Diversion Control Program. Section 111 (b) of that Act requires that there be established an account in the general fund of the Treasury, and in section 111 (b)(1) "there shall be deposited as offsetting receipts into that account all fees collected by the Drug Enforcement Administration, in excess of $15,000,000, for the operation of its diversion control program." In addition, section 111 (b)(3) requires "fees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program."

The Controlled Substances Act of 1970 (CSA) has, for 22 years, required the registration of any person who manufactures, distributes or dispenses a controlled substance. Section 301 of the CSA (21 U.S.C. 821) authorizes the charging of "reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances." This is the only fee collection made by DEA and the administrative mechanisms for its collection and processing are well established and efficient. The fee schedule under the CSA was established in 1971 and was adjusted in 1984. The fees have remained unchanged since that time. Modifications to the fee structure have been applied equitably across all registration categories in accordance with the existing structure.

The legislation (Pub. L. 102-395) requires that the established fee recover costs during fiscal year 1993 and thereafter. The amount to be recovered is established by the Congressional appropriations process. This announcement establishes the fee structure under the existing registration system to recover the legislated appropriation. This appropriated amount required to be recovered for fiscal year 1993 will be $12 million above the fees currently set, and a total of $65.6 million will be required for fiscal year 1994.

A correction is also being made to Section 1301.11(d) to include reregistration which was inadvertently omitted in a previous change to the section.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed action has been submitted for review to the Office of Management and Budget, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. et seq.

This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. The vast majority of DEA registrants are considered to be small entities whose interests are to be considered under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. However, these registrants are predominantly practitioners and pharmacies whose individual registration fees would be increased by $180 once every three years. Therefore, the Administrator has concluded that the fee increase will have no significant impact on small entities.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the proposed rule has no implications which would warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1311

Administrative practice and procedure, Drug traffic control, Exports, Imports.

For reasons set out above, 21 CFR part 1301 and 21 CFR part 1311 are proposed to be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.11 is proposed to be revised as follows:

§ 1301.11 Fee amounts.

(a) For each registration or reregistration to manufacture controlled substances, the registrant shall pay an application fee of $1,000.

(b) For each registration or reregistration to distribute controlled substances, the registrant shall pay an application fee of $500.

(c) For each registration or reregistration to dispense, or to conduct instructional activities with, controlled substances listed in Schedules II through V, the registrant shall pay an application fee of $240 for a three-year registration equating to an annualized fee of $80 per annum.

(d) For each registration or reregistration to conduct research or instructional activities with a controlled substance listed in Schedule I, or to conduct research with a controlled substance in Schedules II through V, the registrant shall pay an application fee of $80.

(e) For each registration or reregistration to conduct chemical analysis with controlled substances listed in any schedule, the registrant shall pay an application fee of $80.

(f) For each registration or reregistration to engage in a narcotic treatment program, including a compounder, the registrant shall pay an application fee of $80.

PART 1311—[AMENDED]

1. The authority citation for part 1311 continues to read as follows:

Authority: 21 U.S.C. 952, 956, 957, 958, unless otherwise noted.

2. Section 1311.11 is proposed to be revised as follows:

§ 1311.11 Fee amounts.

(a) For each registration or reregistration to import controlled substances, the registrant shall pay an application fee of $500.

(b) For each registration or reregistration to export controlled substances, the registrant shall pay an application fee of $500.

Dated: November 20, 1992.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 92-30643 Filed 12-17-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

31 CFR Part 10

[IA-20-92]

RIN 1545-AQ57

Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries Before the Internal Revenue Service; Correction

AGENCY: Treasury.

ACTION: Correction to correction of proposed regulations.

SUMMARY: This document contains corrections to the correction to proposed regulations (IA-20-92), which were published Friday, December 4, 1992, (57 FR 57400). The proposed regulations would amend the regulations governing the practice of individuals before the Internal Revenue Service. These regulations would affect individuals who are eligible to practice before the service.

FOR FURTHER INFORMATION CONTACT: David Meyer at 202-622-6232, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this correction contains corrections to the proposed amendments to the regulations governing practice before the Internal Revenue Service (57 FR 46356, October 8, 1992). The regulations are in subtitle A, part 10, of title 31 of the Code of Federal Regulations and have been reprinted as Treasury Department Circular 230 ("Circular 230").

Need for Correction

As published, IA-20-92 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the correction to proposed regulations (IA-20-92), which was the subject of FR Doc. 92-29351, is corrected as follows:

1. On page 57400, column 1, under the heading **FOR FURTHER INFORMATION CONTACT:**, line 2, the telephone number "202-622-7606" is corrected to read "202-622-6232".

2. On page 57400, column 2, item number 5, the telephone number "202-622-7606" is corrected to read "202-622-6232" wherever it appears in that item number.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-30429 Filed 12-17-92; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT3-1-5452; FRL-4545-8]

Clean Air Act Approval and Promulgation of PM-10 Implementation Plan for Utah

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes approval of the State Implementation Plan (SIP) submitted by the State of Utah for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). The implementation plan was submitted by the Governor of Utah, to satisfy certain Federal requirements for an approvable nonattainment area PM-10 SIP for Utah and Salt Lake Counties.

EPA is also proposing to approve revisions to the State-wide SIP, Chapters 1 through 7 and 10 through 15, which was submitted by the Utah Air Quality Division Director as a supplement to the Governor's submittal. The State-wide revisions pertain to air program elements necessary to implement control strategies to assure attainment and maintenance of the NAAQS, such as resources, emergency episodes, monitoring program, legislative authority, public notification, etc.

DATES: Comments on this proposed action must be received in writing by February 16, 1993.

ADDRESSES: Comments should be addressed to the contact indicated below. Douglas Skie, Chief, 8ART-AP, Air Programs Branch, U.S. EPA, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2466.

FOR FURTHER INFORMATION CONTACT: Lee Hanley, 8ART-AP, U.S. EPA Region

VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1760.

SUPPLEMENTARY INFORMATION:

I. Background

A. Utah PM10 Statutory and Regulatory History

1. 1977 Clean Air Act (CAA) Requirements: Revision and Implementation of PM10 NAAQS

The CAA requires EPA to periodically review and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as revise the NAAQS themselves. On July 1, 1987 (52 FR 24634), EPA finalized its decision to revise the particulate matter NAAQS from "total suspended particulate" (TSP) to particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10).

To implement the new particulate matter NAAQS, all areas in the country were divided into three groups, based on the probability that each area would violate the new PM10 NAAQS. "Group I" areas were those areas having violated the PM10 NAAQS or having air quality data showing a high (greater than 95%) probability of violating the NAAQS. These areas required substantial SIP adjustment. "Group II" areas were those areas estimated at having 20–95% probability of violating the PM10 NAAQS and needing less adjustment to their existing SIPs. "Group III" areas were those areas estimated as having less than 20% probability of violating the PM10 NAAQS and, therefore, only needing SIP adjustment as required under the preconstruction review program. See 52 FR 24672, 24679–82 (July 1, 1987).

In the State of Utah, Salt Lake and Utah Counties were identified by EPA as Group I areas. The rest of the State was classified as Group III (52 FR 29383, August 7, 1987). The State, therefore, under section 110(a)(1) of the 1977 CAA, was required to submit a PM10 SIP.

2. Citizen Lawsuit

In 1989, a lawsuit (*Preservation Counsel* v. *Reilly, Civil Action No. 89–C–262–G*, (D. Utah)) was filed by the Preservation Counsel, Utah Environment Center and the Utah Valley Citizens for Clean Air against EPA. The plaintiffs claimed that because the State had failed to submit a PM10 SIP within the timeframe provided under the 1977 CAA that provided for attainment of the PM10 NAAQS, the duty to issue such a plan for Utah had devolved to EPA and that EPA was required to issue a plan for Utah pursuant to section 110(c)(1) of the 1977 CAA.

A settlement agreement was signed by the parties in January 1990, which called for submittal of a SIP for Utah County and Salt Lake County and EPA approval, or EPA promulgation of a Federal Implementation Plan (FIP) for these Counties, if necessary, signed by the EPA Administrator by December 31, 1991. The settlement allowed the State to maintain the SIP development lead, but placed significant emphasis on EPA's involvement and technical oversight.

In mid–1990, the State determined that the stationary source issues in Utah County were significantly different from those of Salt Lake County and proposed to focus on one area plan at a time. The design values (levels from which to reduce emissions to attain the standard) were also different in these two areas. The Utah County area plan was adopted in September 1990 and submitted to EPA in October 1990. On November 15, 1990, the President signed into law revisions to the CAA (Pub. L. No. 101–549, 104 Stat. 2399). All former "Group I" areas and certain other areas were designated nonattainment for PM10 and classified as moderate by operation of law upon enactment of the 1990 Amendments. (Sections 107(d)(4)(B) and 188(a) of the Act.) Thus, Utah and Salt Lake County became moderate PM10 nonattainment areas (56 FR 56694, 56840, November 6, 1991) and were subject to the associated moderate PM10 nonattainment area SIP requirements.

The Salt Lake County area plan was adopted in June 1991, and submitted to EPA in November 1991. EPA's agreement as to the appropriateness of developing separate plans for the two area plans was based on its review of the various complex source contributions in these areas, the effort by the State to address the issues in an equitable and timely manner (numerous scoping and public hearings were held to obtain interested parties' comments), and the different areas' design values.

The State did consider control strategies for area and mobile sources which were common to both counties. The Utah County plan, therefore, was modified in June 1991 to be consistent with the Salt Lake County plan and resubmitted with the Salt Lake County plan in November 1991.

The parties voluntarily stipulated to dismissal of the lawsuit (agreeing to vacate the Settlement Agreement and dismiss the complaint) in August 1991.

B. Moderate PM10 Nonattainment Area SIP Requirements

The air quality planning requirements for moderate PM–10 nonattainment areas are set out in title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM–10 nonattainment area SIP requirements. (See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).) The reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale. Today's rulemaking action will apply EPA's interpretations to the Utah PM–10 SIP taking into consideration the specific factual issues presented. EPA will consider any timely submitted comments before taking final action on today's proposal.

Part D of title I contains the provisions applicable to nonattainment areas. Moderate PM–10 nonattainment areas must meet the applicable requirements set out in subparts 1 and 4 of part D. Subpart 1, contains provisions generally applicable to all nonattainment areas and subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, subparts 1 and 4 overlap or conflict. The EPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in today's notice.

Those States containing initial moderate PM–10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. A comprehensive, accurate, current inventory of actual emissions which provides a sufficient basis for determining the adequacy of the attainment demonstration.

2. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

3. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable, but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

4. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

5. Provisions to assure that control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM-10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM-10 by June 30, 1992. (See section 189(a).) Such States also must submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM-10 NAAQS by the applicable statutory deadline of December 1994. (See section 172(c)(9) and 57 FR 13543-44.)

II. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals. (See 57 FR 13565-66.) In today's action, EPA is proposing to grant approval of the plan revision submitted to EPA in a letter dated November 15, 1991. This submittal was intended to satisfy those moderate PM-10 nonattainment area SIP requirements due November 15, 1991. EPA proposes to approve the submittal as meeting all of the applicable requirements of the Act.

A. Regulatory Discussion

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. Utah held several public hearings after reasonable notice, evaluated the hearing comments, made changes to the SIPs and regulations as needed, and provided EPA with documentation of this process. The State documentation can be found in the State TSD, Evaluation of the PM10 SIPs Compliance with 40 CFR part 51, appendix V requirements.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action. (See section 110(k)(1) and 57 FR 13565.) The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The Utah PM10 SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete, and a letter dated January 19, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

2. Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Section 110(a)(2)(K) generally authorizes EPA to request any data necessary to perform air quality modeling for the purpose of predicting, among other things, impacts on the PM10 NAAQS. This would include, for example, a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with this submission. (See 57 FR 13539.)

EPA describes the emission inventories for the Utah County and Salt Lake County plans in the discussion of these SIPs set out below. EPA proposes to approve the emission inventories as meeting the section 172(c)(3) statutory requirement.

3. RACM (Including RACT)

The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see sections 172(c)(1) and 189(a)(1)(C), 57 FR 13539-45 and 13560-61; 57 FR 18072-74). The EPA's interpretation of this requirement is set out here only in broad terms.

The State should first identify available control measures, evaluating them for their reasonableness in light of the feasibility of the controls and the attainment needs of the area. A State may reject an available control measure if the measure is technologically infeasible or the cost of the control is unreasonable. The SIP must demonstrate attainment of the NAAQS as expeditiously as practicable, but no later than December 31, 1994 (unless the State demonstrates that attainment by that date is impracticable). Therefore, if a State adopts less than all available measures, but demonstrates, adequately and appropriately, that RFP and attainment of the PM-10 NAAQS is assured, and application of all such available measures would not result in attainment any faster, then a plan which requires implementation of less than all available measures may be approved as meeting the RACM requirement. As a suggested starting point for determining RACM, EPA has identified available control measures for sources of fugitive dust, residential wood combustion, and prescribed burning (57 FR 18072-74). The State should add to the list of available measures in an area, any measures that public commenters demonstrate may well be reasonably available in a particular circumstance.

The RACT for a particular source is similarly determined. The EPA's longstanding definition of RACT is the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (see 57 FR 13541). Thus, EPA recommends that available control technology be applied to those existing sources in the areas that are reasonable to control in light of the attainment needs of the area and the feasibility of controls.[2]

The State submitted documentation on the available control measures (including any available control technology) that explains what constitutes RACM (or RACT) for Utah County and Salt Lake County. EPA

[1] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[2] The EPA has issued guidance on the technological and economic parameters that should be considered in determining RACT for a particular source (57 FR 18073-74).

generally describes the control measures in the Utah County and Salt Lake County plans in the discussion of these SIPs set out below. As indicated below, EPA proposes to approve the control measures in these plans as meeting the RACM (including RACT) requirement.

A more detailed discussion of the individual source and source category contributions, their associated control measures (including available control technology) and an explanation as to why certain available control measures were not implemented, can be found in the State Technical Support Document (TSD).

4. Demonstration of Attainment

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable, but no later than December 31, 1994. (See section 189(a)(1)(B) of the Act; 57 FR 13538–39.) Alternatively, the State must show that attainment by December 31, 1994, is impracticable. In the General Preamble, EPA indicated that the attainment demonstrations for the initial moderate areas must follow existing modeling guidelines for PM10 or, if appropriate, may be developed consistent with the supplemental attainment demonstration policy issued for initial areas (see 57 FR 13539).

The 24-hour PM–10 NAAQS is 150 micrograms/cubic meter (µg/m3), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 µg/m3 is equal to or less than one. (See 40 CFR 50.6.) The annual PM10 NAAQS is 50 µg/m3, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 µg/m3 (id.).

EPA describes the attainment demonstrations, including the air quality modeling utilized, for Utah County and Salt Lake County in the discussion of these SIPs set out below. Both areas demonstrate attainment by the end of 1993 with the control measures adopted. EPA proposes to approve the attainment demonstrations for both of these areas. For a more detailed description of the attainment demonstration and the control strategy used, see the TSD accompanying this notice.

5. PM–10 Precursors

The control requirements applicable to major stationary sources of PM10 precursors must also apply to major stationary sources of PM10 unless EPA determines that such sources do not contributes significantly to PM10 levels which exceed the NAAQS in the area (section 189(e) of the Act). The General Preamble contains a lengthy discussion on control requirements for PM10 precursors in moderate nonattainment areas and the type of technical information which EPA will rely on in making any determinations under section 189(e). (See 57 FR 13539–40 and 13541–42.)

An analysis of air quality and emissions data for the nonattainment area of Utah demonstrates that violations of the PM10 NAAQS are attributable to direct particulate matter emissions from PM10 and to sources of particulate matter precursor emissions of S02 and NOx.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act; 57 FR 13539). RFP is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

For the initial moderate PM10 nonattainment areas, the emissions reductions progress made between the SIP submittal due date of November 15, 1991 and the attainment date of December 31, 1994, will satisfy the first milestone requirement. The de minimis timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations. In implementing RFP for these initial moderate areas, EPA has reviewed the attainment demonstration and control strategy for the areas to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the PM–10 NAAQS by December 31, 1994. (See section 171(1).) EPA is proposing to approve the submittals for both areas as satisfying the quantitative milestone and RFP requirement.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA. (See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556.) The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (See 57 FR 13541.) The criteria include, for example, ensuring that the rules contained in the SIP are clearly worded and explicit in their applicability to the regulated sources, compliance date(s) should be clearly specified, compliance periods and test methods should be clearly noted, recordkeeping requirements should be commensurate with the substantive requirements and failure to keep the required records should constitute a separate violation in itself, and any exemptions or variances should be clear in their applicability and how they are triggered. In addition to enforceable requirements, nonattainment area plan provisions must contain a program that provides for enforcement of the control measures and other elements in the SIP. (See section 110(a)(2)(C).) The State of Utah has a program that will ensure that the measures and other SIP elements are adequately enforced. EPA's confidence level on the enforceability of the PM10 measures and of continued enforcement for stationary sources can be found in the EPA staff evaluation report and in the FY91 end-of-year EPA compliance report which are included in the TSD.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. (See generally 57 FR 13543–44.) These measures must be submitted by November 15, 1993, for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy.

These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM10 NAAQS by the applicable statutory deadline. Since contingency measures were not due with the November 15, 1991 moderate PM10 nonattainment area SIP requirements, EPA is not taking any action on this requirement in today's proposal.

C. The Utah PM10 SIP

1. Utah County

a. *Design value.* The Utah County area has three monitoring sites, each of which recorded violations of the PM10 NAAQS. For the period April 1988 through March 1990, the Lindon site

had 666 total number of days of available data; the second highest value is 254 μg/m3, measured in February 1989. For the period April 1988 through March 1990, the North Provo site had 226 days of available data; the first high is 191 μg/m3 measured in January 1988. For the period January 1989 to December 1989, the West Orem site had 339 days of available data; the first high is 263 μg/m3. These high/second high days represent the design value for these sites; they were determined using the "look-up table," Table 6–1, in the PM10 SIP Development Guideline document (EPA–450/2–86–001).

The Utah County monitoring network recorded additional data other than those stated above. However, to ensure that each season of the year is represented by the data used in determining the design value, EPA requires the use of a complete discrete 12-month data set, or sets which are multiples of 12-month periods. The use of the most recent data sets which represents the area is also encouraged.

The Utah County area had a unique data base involving the operation-shutdown-startup of Geneva Steel. The steel mill was down for the period from August 1986 to September 1987. Data comparison showed the facility as a major contributor to the PM10 violations. The days of violations, the average winter concentration, and average iron content on the filters were significantly greater during the operation of the facility than during the down period.

b. *Methods used to demonstrate attainment.* EPA recommends the use of certain methods to demonstrate whether a plan will provide for timely attainment (57 FR 13538–39). Dispersion and receptor modeling are among the recommended methods and these methods were initially used by the State to define the design value(s) and control strategies. EPA's initial review of the State's effort identified significant problems.

The State's wind data for use in the dispersion model were in vector units; scaler units were required. The meteorological conditions also affected modeling accuracy; the area experienced winds less than two meters per second. The EPA Gaussian (dispersion) model results are suspect under these stagnation conditions. The receptor modeling (Chemical Mass Balance (CMB), version 7.0) showed secondary contribution of 40%+; the dispersion model could address 20% secondary contribution. (Secondary particles are those which form in the atmosphere from gases which are directly emitted by sources. Sulfates and nitrates are the most common secondary particles in this nonattainment area and result from sulfur dioxide and oxides of nitrogen emissions.)

Within the time constraints in meeting the settlement agreement imposed deadlines to complete a SIP, there were extensive reanalyses of the monitoring network, CMB filters, and the emission inventory. The available time and software to convert the vector data to scaler were also reviewed. EPA determined that, with the information available from the detailed emission inventory (supported by a micro inventory) and new CMB analyses, the SIP would not result in additional or different control strategies if there were sufficient time to rerun a dispersion modeling analysis, adjusting for the concerns regarding stagnation and secondary contributions.

As indicated in the General Preamble, 57 FR 13539, EPA has developed a supplemental attainment demonstration policy that applies to the initial moderate PM10 nonattainment areas. ("PM10 SIP Attainment Demonstration Policy for Initial Moderate Nonattainment Areas" issued by John Calcagni on March 4, 1991.) The policy indicates that in certain circumstance (where time constraints, inadequate resources, inadequate data bases, lack of a model for some unique situations, and other unavoidable circumstances would leave an area unable to submit an attainment demonstration by November 15, 1991), "modified demonstrations" may be accepted on a case-by-case basis. The policy recommends that a modified demonstration be accompanied with the following: (1) Documentation of the procedures or analyses used in the modified method; (2) an explanation why alternative methods identified in EPA guidance were not used; (3) a description of how the modified method demonstrates, adequately and appropriately, area-wide attainment; and (4) when the design value is based on monitoring data, a showing that the SIP is based on one full year of adequate data for an approved network, a review of the monitoring data and network, and provision for appropriate followup monitoring to address issues raised during the review. For the reasons stated previously, EPA believes it was appropriate for the State to use a modified demonstration for Utah County. The State TSD describes how the Utah County analyses are consistent with this policy.

c. *Emission inventories.* The base year emission inventory was for 1988. Since the exceedances are winter-time occurrences, the State focused on a winter-time (1988–89 season) inventory and an annual inventory. Summaries of these inventories, as well as the attainment year inventory, are provided in Table 9.A.3 of the SIP. Specific details of the base year and attainment year (after controls) inventories are provided in Volume II, Utah County, State Technical Support Document. The accuracy of the emission inventory was verified through a micro inventory effort. The micro inventory effort is an analyses of the emissions in a specifically defined area around a monitor. The area is defined by looking at the sources that may impact that monitor and the wind patterns for a given 24-hour period around that monitor. The inventory analysis critically scrutinizes the source emissions in that area. For example, in evaluating fuel burning emissions, a door-to-door survey asked questions about what type of fuel was burned, how much was burned, what type of device was used for burning, and when and for how long burning occurred. This type of analysis was carried out for all the source categories; it relied on specific data gathered, rather than on general calculations such as those based on population. The results of this effort are provided in volume I, appendix D, Utah County, State Technical Support Document. The discussion comparing the results of the micro inventory to the primary PM10 average estimates for the CMB analyses is found in volume I, General Data, section 7.0, Salt Lake County, State Technical Support Document. EPA is proposing to approve the emissions inventory submitted by the State for Utah County as meeting the emissions inventory requirement of section 172(c)(3) of the Act.

Although the design values varied by site, the source apportionments were similar. The source apportionment at the West Orem monitoring site, which had the County's highest design value, was representative of the source apportionment of the Lindon and North Provo monitoring sites. Thus, if attainment can be demonstrated at West Orem, attainment could also be assured at the other two sites. The categories of sources contributing to the design day include Geneva Steel (62.5%, primary and secondary), automobile (10.9%, primary and secondary), space heating (including wood and coal burning, primary and secondary, 16.6%), and other point sources (10%, primary and secondary).

d. RACM (including RACT). To demonstrate attainment by December 1994 (and to show ongoing maintenance of the NAAQS), the SIP provided for implementation of the following control

measures (the SIP shows attainment by 1993 and maintenance to 2003):

(1) New operating parameters and emission limitations for PM10, SO_2, and NOx for existing sources of primary and secondary PM10 impacting the ambient concentrations at the monitoring sites are detailed in appendix A.1. of the Utah Air Conservation Regulation (UACR). These control measures include:

(a) A 54.4% emission reduction for Geneva Steel (primarily from the coke oven stacks and open hearth), includes facility-wide emission limitations, and reporting and recordkeeping requirements specified in appendix A.1.2.F of the SIP;

(b) Fourteen other sources, which include a nitric acid plant, power plants, and asphalt & cement plants, have emission limitations specified in appendix A.1.2.A through A.1.2.O;

(c) Provisions limiting fuel burning to natural gas or to a specific sulfur content in the fuel, with specific permitting and recordkeeping requirements, apply to all major fuel burning units or facilities in the County;

(d) General provisions relating to stack testing, opacity, compliance with annual limitations, recordkeeping requirements of consumption/production, on-site fugitive dust control requirements from unpaved operation areas, etc., are specified in appendix A.1.1;

(e) Regulations to ensure implementation and enforcement provisions were revised or added, such as definitions, general requirements applicable to all sources or source categories, permitting regulations, emission standards, and emergency episode requirements.

(2) No burn periods, beginning September 1992, will achieve 60% emission reduction from fireplaces and 50% from woodstoves (section 9.A.6(4)(a) of the SIP):

(a) Area coverage is north of the southernmost border of Payson City and east of State Route 68. (This covers virtually all the populated areas in Utah County; the area not covered is mountainous and Utah Lake);

(b) Program is triggered when ambient PM10 concentrations reach 120ug/m3 as measured by the real-time monitor located at the Lindon monitoring site;

(c) City and County Health Department commits to adopt local regulations to promulgate plan consistent with the State regulations;

(d) The State commits to eight inspectors round-the-clock during mandatory no burn periods and inspections to include investigation of calls made by private citizens;

(e) A regulation which specifically prohibits any visible emissions during the mandatory no burn period, except for those residences with burning as the sole source of heat for the entire residence and registered with the Executive Secretary or the local Health District (UACR 4.13.3);[3] and

(f) Guidelines established for assessing the amount of penalty for violation of the no burn regulation (UACR 9.A.6.(4)(c)(viii)).

(3) Reducing sand/salt/slag applied to roads during the winter time by 20% (section 9.A.6(7) of the SIP). In addition, a study is to be conducted to confirm 20% reduction. Within six months from completion of the study, agencies responsible for application of these materials on the road must submit a plan and implementation schedules to reduce initial silt loading by 25% from the amount applied during the 1990 base year. The methods included in the Plan must be implemented by 10/1/93. Regulations specifying the requirements for those who apply salt, slag or sand to road are located in UACR 3.2.7.A & B.

EPA is proposing to approve the road salting and sanding rules contained in the SIP. Further, based on the information currently available, EPA believes the 20% reduction estimated by the State is reasonable. However, the State has committed to conduct a study to confirm the appropriateness of this reduction estimate.

In addition, the State has committed to implement methods, described above, in light of the study no later than October 1, 1993, and to submit the findings of the study and any such measures to EPA as a SIP revision. In acting on any such SIP revision, EPA would review the sufficiency of any new measures in light of the new information. EPA also may find it necessary to assess the sufficiency of the area's attainment demonstration in light of such new information. See section 110(k)(6) of the Act.

e. Attainment demonstration. EPA requires that attainment be demonstrated at all sites violating the PM10 standard. The control measures discussed above are necessary for all the sites to attain the standard, although the impact of a specific source category at a site may vary. The attainment summary for the 24-hour PM10 NAAQS at each of the three monitoring sites (Lindon, North Provo, and West Orem) through the year 2003 can be found in Tables 9.A.5, 9.A.7 and 9.A.9 of the SIP, respectively. Changes in emissions between 1993 and 2003 show a slight decrease in mobile source emissions, but a slight increase in residential space heating (woodburning) emissions.

Although the State focused on the emissions and exceedances during the winter months, the control measures specific to the stationary sources are year-round. The highest annual average in Utah County occurred in 1988 at the Lindon site and was 54 ug/m3. Since attainment of the 24-hour design value results in an emission reduction of 43% in Utah County, the 24-hour emission limits are the more restrictive and will ensure attainment of the annual standard (as summarized in Table 9.A.24 of the SIP).

In sum, EPA believes the methods, including modeling, that the State has employed to demonstrate attainment are adequate and appropriate. Those methods demonstrate that the control measures described above will provide for attainment of the PM10 NAAQS in Utah County as expeditiously as practicable and no later than December 31, 1994. Therefore, EPA is proposing to approve the State's attainment demonstration. Because the State has adopted those available control measures, described above, that will provide for attainment of the PM10 NAAQS in Utah County as expeditiously as practicable and no later than December 31, 1994, these measures are "reasonably" available and EPA is proposing to approve these control measures as meeting the RACM (including RACT) requirement for the Utah County PM10 nonattainment area.

f. Additional measures. The State has also committed to adopt a diesel inspection and maintenance (I/M) program to reduce diesel particulate emissions by 20%. The SIP contains a detailed discussion of the program elements, committed to by the State, including, among other things, the following measures:

(a) Opacity inspections and mandatory repair upon failure;

(b) Compliance monitored through diesel vehicle registration;

(c) Certification of mechanics and stations upon their demonstration of adequate training, skill, and resources;

(d) Opacity compliance test methods and roadside opacity enforcement;

(e) Fleet self-certification;

(f) Limited waiver provisions;

(g) Public education on the program requirements provided to diesel vehicle owners and diesel industry organizations;

[3] The SIP requires that the County develop regulations/ordinances for fireplace and woodstove installer and operator training programs, a solid fuel burner inspection program, weatherization requirements for homes, and banning of coal burning. EPA notes that when implemented, this program should ensure maintenance of the NAAQS in the area.

(h) Enforcement program, penalties and annual program evaluation.

The SIP also contains a detailed schedule of the State's action on the program that indicates, among other things, the program provisions will become effective on July 1, 1993. If EPA takes final action approving the State's commitment, the State must submit the program to EPA as a SIP revision.

Based on information available at the time the SIP was developed, it was believed that a 20% emission reduction could be achieved by a diesel I/M program combining elements of the California and Colorado diesel I/M programs, and inclusion of the majority of diesel vehicles operating in the Wasatch Front area. Recently, EPA has examined the Colorado and California programs because of increasing interest nationwide, and has presented revised estimates of their effectiveness. This updated information suggests that more work needs to be completed on both the technical design and administrative implementation elements of the Utah program.

EPA is proposing to approve the State's commitment to implement a diesel I/M program as strengthening the SIP. The State has been holding working group meetings with the I/M counties and affected parties to draft regulations and technical specifications, and has consulted with EPA Region VIII and the EPA Office of Mobile Sources (OMS) on available technologies, experience with other programs, and program enforcement. While test procedures have not been finalized and vehicle applicability has not been defined, EPA believes that a 20% reduction may be achievable under some program scenarios similar to those currently under consideration by the State of Utah.

In sum, EPA notes that it is unnecessary at this juncture to quantify the actual emissions reductions that will be realized from this program. EPA intends to determine what emissions reductions should be assigned to this program when EPA takes rulemaking action on the SIP revision containing the program actually adopted by the State.

2. Salt Lake County

Two distinct PM10 problems have been identified in Salt Lake County: (1) The summer-time exceedances due to blowing dust from the Kennecott tailings in Magna, and (2) the winter exceedances during winter inversion periods in Salt Lake and Davis Counties.

a. Magna—design value. Based on 724 observations in a three-year period, 1987 through 1989, the design value was determined to be the third-high reading, 304 ug/m3. The exceedances were specifically caused by blowing dust from the Kennecott tailings pond while the facility was shut down. Additional analyses to determine any other source contribution were not necessary.

b. Magna—RACM (including RACT). Kennecott and the State agreed to various control measures to ensure dust control of the tailings pond during current operation, and temporary or permanent shutdown of the mine, smelter and/or associated tailings pond operations.

The control measures (which included slurry distribution throughout the periphery and surface top of the pond) were completed in July 1988. Vegetation planting was also initiated. The meteorological conditions (winds at 15 mph or greater) which caused the past exceedances have occurred since the implementation of the control measure and no exceedances were recorded. The control measures are defined in section 9.A.6(1) of the SIP and appendix A.2.2.BB.B of the Utah Air Conservation Regulation.

c. Salt Lake County—Design Value. The Salt Lake County exceedances, with the exception of the Magna area problem, occurred only during the winter season (November through February). The County has three monitoring sites (North Salt Lake, Air Monitoring Center, and Salt Lake), which recorded violations of the PM10 NAAQS. The North Salt Lake site had data from 1987 to 1990; the design value is 169ug/m3. The Air Monitoring Center had data from 1989 and 1990; the design value is 177ug/m3. The Salt Lake site had data from 1988 to 1990; the design value is 170ug/m3.

The source apportionments for these sites are fairly similar, showing significant PM10 contribution from secondary emissions. (In this nonattainment area secondary emissions, called precursors, are gaseous emissions of sulfur dioxide (SO2) and nitrogen oxides (NOx) that result in particulates due to chemical reactions in the atmosphere.) The Salt Lake area has different types of major stationary sources which emit SO2 and NOx emissions including refineries, a copper smelter, power plants, and asphalt plants. Significant emissions were also identified from industrial vehicles, trains, and planes (Salt Lake has an international airport and a major railroad distribution center), woodburning, and from gasoline vehicles. The State concluded that showing attainment at the Air Monitoring Center, where the design value was highest, would also show attainment at the remaining two sites.

Analyses of the gridded emission inventory and the CMB indicated that the Salt Lake monitors, especially the North Salt Lake site, were impacted by PM10 and its precursors (SO2 and NOx) in Davis County. Therefore, to adequately address the nonattainment problem in Salt Lake County, sources were evaluated and controls required in Davis County, as well as in Salt Lake County.

d. *Salt Lake County—Methods Used to Demonstrate Attainment.* As with the Utah County effort, the Salt Lake modeling analysis was receptor modeling, or CMB, due to difficulties with using dispersion modeling. Low wind speed (stagnation) and inversions were occurring meteorological conditions; they were not necessarily as severe as the conditions in Utah County. The area, however, had significant mountain-valley-lake effects. (The Wasatch Mountains are to the east and the Great Salt Lake is to the west.) The State has only vector wind data, which could not be changed to scaler units in a timely manner. Therefore, to meet the deadlines of the Settlement Agreement, EPA and the State agreed to proceed with the Salt Lake analysis using CMB and emission inventory rollback. A micro inventory and critical review of the CMB provides an adequate and appropriate analyses of the PM10 contribution and the required emission reduction necessary for attainment in Salt Lake County. In addition, Kennecott Copper performed a tracer study in February 1990 to determine if its emissions impact the Salt Lake monitoring sites. That study confirmed that the 1,215 ft. stack and emissions from low heights at the smelter do impact the monitoring sites.

One of the factors that supported the decision to evaluate the area using CMB and emission inventory data and not dispersion modeling was the acceptability of the ambient air monitoring network. The area has seven sites: (1) Bountiful is representative of the residential community to the north, (2) North Salt Lake is representative of the refinery industrial area, (3) Salt Lake City is representative of downtown Salt Lake and vehicle related emissions, (4) Air Monitoring Center also represented the downtown area, (5) Magna is representative of the Kennecott Tailings problem, (6) Breeze Drive is representative of the residential area in Magna and is not source oriented, and (7) Cottonwood is southeast of downtown Salt Lake and is a residential area of maximum woodburning impact. The State provided gridded emissions

analyses for all stationary sources of PM10, SOx, and NOx emitting greater that 40 tons per year (tpy), area source emissions (space heating emissions based on the micro inventory and population density information), and mobile source emissions (based on traffic counts, vehicle registration and population density information). The adequacy of the monitoring network's performance (i.e., quality assurance, performance and accuracy, etc.) was also evaluated as described in the TSD.

As discussed in II.C.1.b above, EPA's policy indicates that, in certain circumstances, "modified demonstrations" may be accepted on a case-by-case basis. The policy is applicable to the Salt Lake County attainment demonstration due to the meteorological and topographical concerns, as well as the secondary particulate contribution issues. These issues were documented in the TSD.

The State also adequately addressed issues associated with the complexity of collecting, analyzing, and interpreting the CMB data including: (1) Excess water or ice buildup on the filters, (2) quartz versus teflon filters, (3) refrigeration versus room temperature for storing of filters, (4) number of samples to evaluate, (5) availability of source profiles for identified source types, (6) more source profile versus chemical measurements, and (7) interpretation of mass loss. The potential uncertainties associated with the CMB were significant in Salt Lake County due to the larger impact from a variety of source types in the area and the larger area, and stationary and mobile source secondary emissions. However, the State adequately addressed this by conducting extensive analysis on additional filter media collected in 1990 which considered all the factors mentioned above. The State's documentation of this modeling analysis is found in volume I, Salt Lake County, General Data Technical Support Document.

e. *Salt Lake County—Emission Inventory.* The base year emission inventory was for 1988. Since the exceedances were winter-time occurrences, the State focused on a winter-time (1988–89 season) inventory and an annual inventory. Summaries of these inventories, as well as the attainment year inventory, are provided in Table 9.A.13 of the SIP. Specific details of the base year and attainment year (after controls) inventories are provided in volumes II through VI, Salt Lake County, State Technical Support Document. The accuracy of the emission inventory was verified through a micro inventory effort. The results of this effort are provided in volume I, appendix D, Salt Lake County, State Technical Support Document. The discussion comparing the results of the micro inventory to the primary PM10 average estimates for the CMB analysis is found in volume I, General Data, sections 4.0, 5.0 and 7.0, Salt Lake County, State Technical Support Document. Thus, EPA is proposing to approve the emissions inventory information submitted by the State for this area as meeting the requirement of section 172(c)(3) of the Act.

The Air Monitoring Center site, with the highest design value in the area, was used as the "control" site for demonstrating attainment of the PM10 NAAQS in Salt Lake County. The categories of source contribution for the highest design value site include refineries (5.35% primary), other point sources (12.42% primary), secondary sulfates (12.97%, primarily from Kennecott smelter and refineries), secondary nitrates (10.42%, primarily from Kennecott mine and refineries), automobiles (29.28% primary and secondary), space heating (including wood and coal burning, 24% primary and secondary), and other sources (trains and planes, 3.52% primary and secondary). The source contribution for all the sources, except Kennecott, are similar at the other monitoring sites. The Kennecott source contributions were 4 to 6% for primary PM10 at the North Provo and Salt Lake sites and 0% at the Air Monitoring Center.

f. Salt Lake County—RACM (including RACT). To demonstrate attainment by December 1994 (and to show on-going maintenance of the NAAQS), the SIP provides for implementation of the following control measures (the SIP shows attainment by 1993 and maintenance to at least 2000):

(1) New operating parameters and emission limitations for PM10, SO2, and NOx for existing sources of primary and secondary PM10 impacting the ambient concentrations at the monitoring sites are detailed in appendix A.2. of the UACR. These control measures include:

(a) Significant emission reduction for Kennecott's facilities (concentrator, power plant, refinery, gold mine, copper mine and smelter). The smelter's 1215 foot stack previously was allowed to emit SO2 emissions of 18,000 lbs/hr, annual average and a maximum 3-hour average of 98,400 lbs/hr. The new emission limit which requires emission reduction equivalent to that which would be realized from a double contact acid plant is 3,240 lbs/hr, annual average and 5,700 lbs/hr, 24-hour average.

(b) Emission reduction for the refineries (the major control requirements are the installation of a sulfur recovery unit, and emission limitations on the boilers, furnaces, flares, catalytic crackers, etc.);

(c) Provisions allowing the burning of only natural gas fuel during the winter time (November through February) at all power plants; year-round burning of natural gas fuel is required at Utah Power and Light (Gadsby and 40 N. 100W.) and Murray City Power;

(d) Sources are considered major if they emit 50 tpy of PM10, SO2, or NOx, or any combination of the three pollutants.

(e) General provisions relating to stack testing, opacity, compliance with annual limitations, recordkeeping requirements of consumption/production, on-site fugitive dust control requirements from unpaved operation areas, etc.

(f) Regulations to ensure implementation and enforcement provisions were revised or added, such as definitions, general requirements applicable to all sources or source categories, permitting regulations, emission standards, emergency episode requirements and malfunction provisions.

(2) No burn period, beginning September 1992, will achieve 60% emission reduction from fireplaces and 50% from woodstoves (section 9.A.6(4)(b) of the SIP):

(a) Area coverage is all of Salt Lake County and for areas in Davis County which are south of the southern-most border of Kaysville; the prohibition applies when the ambient concentration of PM10 reaches 120 μg/m3 and the forecasted weather includes a temperature inversion which is predicted to continue for at least 24 hours;

(b) The State commits to eight inspectors round-the-clock during mandatory no burn periods and inspections to include investigation of calls made by private citizens;

(c) A regulation which specifically prohibits any visible emissions during the mandatory no burn period, except for those residences with burning as the sole source of heat for the entire residence and registered with the Executive Secretary or the local health department (UACR 4.13.3); and

(d) Guidelines established for assessing the amount of penalty for violation of the no burn regulation (UACR 9.A.6(4)(c)(viii)).

(3) Reducing sand/salt/slag applied to roads during the winter-time by 20%, as described above in the Utah County plan, B.1.d.3. EPA's position regarding

this measure is also the same as described above in the discussion of the Utah County plan and is incorporated here by reference. In short, EPA is proposing to approve the road salting and sanding rules contained in the SIP. Based on the information currently available, EPA believes the 20% reduction estimated by the State is reasonable. However, in acting on any SIP revision following from the study described in B.1.d.3 above, EPA would review the sufficiency of any new measures in light of the new information. EPA also may find it necessary to assess the sufficiency of the area's attainment demonstration in light of such new information. See section 110(k)(6) of the Act.

g. *Salt Lake County—Attainment Demonstration.* The control strategies discussed above are necessary to demonstrate attainment at the three monitoring sites, although the impact of a specific source category at a site may vary. The attainment summaries for the 24-hour PM10 NAAQS at each of the monitoring sites (North Salt Lake, Air Monitoring Center, and Salt Lake City) through the year 2000 can be found in Tables 9.A.16, 9.A.a and 9.A.22, respectively. Changes in emissions between 1993 and 2000 show a slight decrease in mobile source emissions, but an increase from residential space heating (woodburning).

Although the State focused on the emissions and exceedances during the winter months, the control measures specific to the stationary sources are year-round. The highest annual average, 54μg/m3, in Salt Lake County occurred in 1988 at the North Salt Lake site. Since the 24-hour design value results in a PM10 emission reduction of 19.6% in Salt Lake County, the 24-hour emission limits are more restrictive, and will ensure attainment of the annual standard (as summarized in Table 9.A.24 of the SIP).

The methods, including modeling, that the State has employed to demonstrate attainment are adequate and appropriate. Those methods demonstrate that the control measures, including the Magna measures, will provide for attainment of the PM10 NAAQS in Salt Lake County as expeditiously as practicable and no later than December 31, 1994. Therefore, EPA is proposing to approve the State's attainment demonstration for Salt Lake County. Because the State has adopted those available control measures, described above, that will provide for attainment of the PM10 NAAQS in Salt Lake County as expeditiously as practicable and no later than December 31 1994, these measures are "reasonably" available and EPA is proposing to approve these control measures as meeting the RACM (including RACT) requirement for the Salt Lake County PM10 nonattainment area.

h. *Additional Measures.* The State's commitment to adopt a diesel I/M program to reduce diesel particulate emission by 20% applies to Salt Lake and Davis County as well as Utah County (section 9.A.6(6) of the SIP). In the Utah County portion of this notice, EPA described in broad terms the program elements and associated schedules committed to by the State. The prior discussion of the commitment applies with equal force here. EPA's position regarding the State's commitment to adopt this program is also the same as that described in the Utah County discussion above and is incorporated here by reference. In short, EPA is proposing to approve the State's commitment to develop and implement the program as strengthening the SIP. EPA also notes that it is unnecessary, at this juncture to quantify the actual emissions reduction that will be realized from the program. EPA intends to determine what emissions reductions should be assigned to this program when EPA takes rulemaking action on the SIP revision containing the program actually adopted by the State.

D. Additional Section 110(a)(2) and Section 172 CAA Requirements

The Utah State-wide SIP was last revised in 1978 and, at that time, the State addressed major SIP elements such as resources, ambient monitoring program, emergency episodes, permitting, etc. These program elements are required by section 110(a)(2) and section 172 (Part D) of the CAA. The Utah SIP has been revised since 1978, but the revisions were only for pollutant specific nonattainment areas. To ensure adequate implementation and enforcement of the PM10 SIP, the State reviewed and updated its State-wide SIP and regulations. The regulations were revised with the PM10 SIP. The State-wide SIP, excluding section 9 (pollutant specific nonattainment area plans and section 8 (Prevention of Significant Deterioration), was revised to address changes in EPA guidance and other Federal requirements. A public hearing was held on these revisions on December 16, 1991. The revisions were made effective on March 31, 1992, and officially submitted to EPA on October 16, 1992. These revisions are set out in chapters 1–7 and 10–16 of the State-wide SIP. EPA is proposing to approve these revisions in today's notice.

Prior to this revision, the UACR were incorporated into the State-wide SIP, chapter 12. During the public hearing process, the State identified administrative and publishing concerns which justified the "rearranging" of the regulations and the document titled "SIP". The State clarified that the SIP has always been incorporated by reference into the regulations, as stated in UACR R446–2. Past inclusion of the regulations into the SIP creates a double incorporation. The State clarified that the regulations and the revised "SIP" will continue to be federally enforceable for the State-wide program. Clarification of the State's position on this issue is documented in the State's response to public hearing comments on the revisions to chapter 1–7 and 10–15; the State's internal memorandum of its response to public hearing comments is dated December 23, 1991, and is included in the State TSD.

E. Post SIP Submittal Issues

EPA reviewed the Utah PM10 submittal dated November 15, 1991, and determined the package as administratively and technically complete. This finding was documented in a letter to the Governor of Utah on January 17, 1992. EPA, however, had several concerns on the approvability of the SIP due to missing documentation. Documentation on the State's analyses on various stationary source control measures and how they were to be revised in the SIP and specified in the permits was needed. EPA has since received a majority of the documentation requested or has received an adequate State response with respect to correcting any stationary source emission limitation clarity issues. The State did not need a formal SIP revision (i.e., that which has gone to the public hearing process) to correct these changes (with the exception of the Pacific States Cast Iron opacity and the 202 test method, discussed below) because the changes were not significant substantive modifications.

The Pacific States Cast Iron Company (this source is located in Utah County) opacity limit stated in the SIP is 30%. Generally, EPA policy provides that, for any major stationary source emitting particulates in a nonattainment area, the opacity should be restricted to 20% unless the source can demonstrate that 20% is not feasible. In that case, the source must demonstrate the lowest opacity level that is feasible. The 30% opacity was a requirement that was stated in the public hearing document. This opacity limit was an oversight in the review of the Pacific States Cast Iron emission limitations. In a letter dated

October 23, 1992, the Director of the Utah Division of Air Quality committed to review the emission limit (the 20% or feasible opacity level) for this source and to adopt a SIP revision, if appropriate, by March 1993. The source permit requirements will be modified through the permit review process (as approved by EPA and which includes a public hearing). The SIP limitations will be revised accordingly. The actions proposed in today's notice do not appear to be affected by the current emission limit for this source. However, review of the emission limit may, among other things, facilitate maintenance of the PM10 NAAQS.

When the Utah PM10 SIP was finalized, Method 202 had not been promulgated by EPA. Therefore, the absence of Method 202 is not a basis for disapproving any requirements or elements in the SIP submittal being acted on today. However, Method 202 is now available and should be specified in the future as appropriate in the SIP and in the stationary source permits. The State was aware of this potential requirement and did agree to address this in a future SIP revision. This issue was discussed during the public hearing process.

During the review of the November 15, 1991 submittal, EPA and the State identified typographical errors in the final printing of the SIP. The State has committed to correct these errors in a letter dated July 1, 1992. The typographical errors are:

(1) page 42 of the SIP, section 9.A.6.(2)(a), fifth line incorrectly references the monitor site in the UACR. It should reference appendix A, section 9 of the SIP. (2) page 52 of the SIP, third paragraph, sixth line, the "* * * 1998 base year * * *" should be "* * * 1990 base year * * *" (3) page 185, section 9 of the SIP, appendix A.2.2.RR, Condition 6, needs to be deleted, this condition applies to the Kennecott tailings pond, not the Salt Lake County Asphalt-Welby Pit.

III. Implications of Today's Action

The EPA is proposing to approve the plan revision submitted to EPA for the Utah and Salt Lake Counties, Utah, in a letter from the Governor dated November 15, 1991. Among other things, the State of Utah has demonstrated that the Utah and Salt Lake Counties PM10 nonattainment areas will attain the PM-10 NAAQS by December 31, 1994. The Utah Air Quality Regulations have been revised numerous times since the early 1970's. The regulations have been renumbered and new requirements added. For that reason, EPA has proposed to replace, in its entirety, the existing UACR with that which was also submitted on November 15, 1991.

EPA is also proposing to approve the State-wide SIP revisions (chapters 1–7 and 10–15) submitted in a letter dated October 15, 1992, by the Director, Utah Air Quality Division. The October 15, 1992 submittal was referenced in the Governor's original November 15, 1991 letter.

As noted, additional submittals for the initial moderate PM-10 nonattainment areas are due at later dates. The EPA will determine the adequacy of any such submittal (i.e., new source review, contingency measures) as appropriate.

IV. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this notice, EPA will consider any comments received by February 16, 1993.

V. Executive Order 12291

The OMB has exempted this rule from the requirement of section 3 of Executive Order 12291.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.* 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, hydrocarbons, intergovernmental relations, nitrogen dioxide, particulate matter, reporting and recordkeeping requirements, and sulfur dioxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 7, 1992.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 92–30659 Filed 12–17–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 28

[CGD 88–079a]

RIN 2115–AD12

Commercial Fishing Industry Vessel Regulations

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking; extension of comment period.

SUMMARY: On October 27, 1992 the Coast Guard published in the **Federal Register** (57 FR 48670) a supplemental notice of proposed rulemaking for documented or state numbered uninspected fishing, fish processing, and fish tender vessels to implement provisions of the Commercial Fishing Industry Vessel Safety Act of 1988. Because of requests for additional time to comment on the proposed rulemaking, the comment period is being extended for an additional 60 days. Also, a toll free telephone number will be established at Coast Guard Headquarters that will allow the public another avenue to provide the Coast Guard with comments.

DATES: Comments must be received on or before February 28, 1993.

ADDRESSES: Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA–2/3406) (CGD 88–079a), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments via the toll free (1–800–282–8724) number may be called in 24 hours a day, seven days a week. The telephone number is (202) 267–1477 for further information about submitting written comments. For further information concerning phone comments, contact LCDR Tim Skuby, (202) 267–2307.

The Executive Secretary maintains the public docket for this rulemaking.

Written comments and synopsized transcripts of verbal comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters. Original recordings of telephone comments may be listened to at this address with advance request to do so.

FOR FURTHER INFORMATION CONTACT: LCDR Tim Skuby, Merchant Vessel Inspection and Documentation Division, Fishing Vessel/Offshore Activities Branch (G-MVI-4), room 1405, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-2307.

SUPPLEMENTARY INFORMATION:

Request for Comments

In the supplemental notice of proposed rulemaking (SNPRM) published on October 27, 1992, the Coast Guard encouraged interested persons to participate in this proposed rulemaking by submitting written comments including views, data, or arguments. Several persons requested additional time to comment citing the reason that the SNPRM will have a potentially major impact on a large segment of the fishing industry and that with the holiday season approaching, it would be difficult for them to study these proposed regulations and provide responsible feedback. Further, the Coast Guard has determined that a 60 day comment period may have been insufficient for industry publications to notify their readers of the opportunity to comment on the proposed rule in time for them to do so.

Additionally, the Coast Guard is establishing a toll free number at Coast Guard Headquarters that will allow the public another avenue to provide comments. The toll free number is 1-800-282-8724 and will be on line beginning December 28, 1992. This number will be unattended. A prerecorded message will greet the caller. Comments received using this number will be considered along with the written comments. In addition, use of this number to provide verbal comments will constitute specific permission from the caller to record the phone call.

The Coast Guard does not agree that there is a need to provide the public hearings for this rulemaking. It is the Coast Guard's position that the holding of public hearings will not measurably benefit this rulemaking.

The Coast Guard held 13 public hearings prior to the publication of a final rule (CGD 88-079) implementing other provisions of the Commercial fishing Industry Vessel Safety Act of 1988 in the **Federal Register** on August 14, 1991 (56 FR 40364). As a result of these public hearings and the written comments, three topics (stability for fishing vessels less than 79 feet in length, survival craft for fishing vessels carrying less than four individuals on board operating within 12 miles of the coastline, and the administration of exemptions) were separated from that final rule. This SNPRM is the direct result of written and verbal comments previously provided on the subject of stability for fishing vessels less than 79 feet in length, and they have been incorporated into this proposed rulemaking. By extending the comment period an additional 60 days, for a total of 120 days, and by establishing the toll free number, the Coast Guard has determined that ample opportunity to comment on these proposed regulations is provided.

Persons submitting comments, whether written or verbal, should include their name and address, identify this rulemaking (CGD 88-079a) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgement of receipt of written comments should enclose a stamped self-addressed postcard or envelope. For those persons using the toll free number, a request for acknowledgment of receipt of their verbal comments should be made during the phone call.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

Dated: December 10, 1992.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-30568 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB83

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing on Proposal To List the Delhi Sands Flower-Loving Fly as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), gives notice that a public hearing will be held on the proposed rule to list the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) as an endangered species. The hearing will be held on January 5, 1992, in San Bernardino, California. Interested parties may submit oral or written comments on the proposal to the Service at the hearing. The proposed rule was published on November 19, 1992 (57 FR 54547).

DATES: A public hearing will be held from 6 p.m. to 8 p.m. on Tuesday, January 5, 1993, in San Bernardino, California. Comments from all interested parties must be received by January 19, 1993. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The hearing on Tuesday, January 5, 1993, will be held at the San Bernardino County Government Center, Board Chambers, 385 N. Arrowhead Avenue, San Bernardino, California. Written comments and materials may be submitted at the hearing or may be sent directly to Mr. Jeffrey Opdycke, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Jeffrey Opdycke, Field Supervisor, at the address listed above (telephone 619/431-9440).

SUPPLEMENTARY INFORMATION:

Background

The Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) is a large insect that is restricted to areas of the Delhi Sands formation, within an 8 mile radius in southwestern San Bernardino and northwestern Riverside Counties, California. Agricultural land conversions during the 1800's destroyed most of the Delhi Sands flower-loving fly's habitat. Intensive urban, residential, and commercial development, removal of vegetation for fire control, invasion of exotic vegetation, illegal dumping, and off-road vehicle use threaten the species' survival at present. Since 1975, 50 percent of the species' habitat has been destroyed. In the fall of 1990, only six extant colonies remained. Since then, two colonies have been destroyed and

one colony was bisected and reduced in size.

On November 19, 1992, the Delhi Sands flower-loving fly was proposed for listing as an endangered species (57 FR 54547). Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of publication of a proposed rule.

Because of the level of interest in this proposed action, and in anticipation of requests for a hearing on the proposal, the Service has scheduled a public hearing at the following time and location:

Tuesday, January 5, 1993, from 6 p.m. to 8 p.m.: San Bernardino County Government Center, Board Chambers, 385 N. Arrowhead Avenue, San Bernardino, California.

Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments will be given the same weight as oral comments. Written comments may be submitted at the hearing or mailed to the Carlsbad, California address given in the ADDRESSES section of this notice. The comment period closes on January 19, 1993.

Author

The primary author of this notice is Mr. John Hanlon, Fish and Wildlife Biologist, Carlsbad Field Office (see ADDRESSES section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 11, 1992.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92–30633 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AA98

Endangered and Threatened Wildlife and Plants; Notice Reopening the Public Comment Period for the Bruneau Hot Spring Snail (Pyrgulopsis Bruneauensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: The Fish and Wildlife Service (Service) is reopening the comment period on the proposal to add the Bruneau Hot Spring snail (*Pyrgulopsis bruneauensis*) to the list of endangered wildlife. The Bruneau Hot Spring snail is endemic to the complex of related thermal springs adjacent to the Bruneau River south of Mountain Home, Idaho. The major threat to this species is habitat loss due to the drastic and continuing reduction in thermal spring flows from groundwater withdrawal/mining in the Bruneau Hot Spring aquifer. The Service proposed the snail for listing as endangered on August 21, 1985 (50 FR 33803). During four public comment periods and two public hearings following the proposed rule, the Service received new information that questioned the distribution, population status, and impacts of present threats. In addition, there was substantial disagreement regarding the sufficiency or accuracy of the available data used to prepare the proposed rule. Following this period, the U.S. Congress appropriated funds to: (1) Implement a tentative draft management plan developed by the Service and five cooperating agencies: Bureau of Land Management, U.S. Geological Survey, Farmers Home Administration, Idaho Department of Fish and Game, and Idaho Department of Water Resources; (2) further study the species' current status and distribution; and (3) study hydrological conditions and groundwater withdrawal in the Bruneau River basin. A final decision concerning the proposed rule has not been published. On July 6, 1992, the Land and Water Fund of the Rockies, representing the Idaho Conservation League and the Committee for Idaho's High Desert, filed suit in Federal district court in Boise, Idaho. The suit was filed under the Endangered Species Act of 1973, as amended, over the Service's failure to make a final decision on the proposed listing of the Bruneau Hot Spring snail. Because of the concerns raised in the lawsuit and to ensure the accuracy of any final decision concerning the appropriateness of listing, the Service reopened the public comment period on October 5, 1992, for 30 days to solicit any additional new information available for consideration. However, after the comment period closed on November 4, 1992, the Service published a notice in the Idaho Statesman announcing that the comment period had reopened. In response to this newspaper notice, several individuals expressed an interest in submitting comments; however, the Service could not officially consider those comments since the public comment period had closed. For this reason, the Service reopens the public comment period on the proposed rule for 10 days. The Service's goal is to base its final decision on the best available scientific and commercial information.

DATES: The comment period on the proposal is reopened until December 28, 1992.

ADDRESSES: Written comments and materials should be sent to Charles Lobdell, Field Supervisor, Boise Field Office, Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Boise Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Duke, Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705, (208) 334–1931.

SUPPLEMENTARY INFORMATION:

Background

The first collections of the Bruneau Hot Spring snail were made in 1952 and 1953. Dr. Dwight Taylor studied the anatomy of the species and determined that it represented a previously unknown genus and species of the snail family Hydrobiidae. Dr. R. Hershler (1990) formally described this species, naming it *Pyrgulopsis bruneauensis*. The thin, transparent shell of the species is less than 3.00 mm (1/10 inch) in height, with 3.75 to 4.25 whorls and roughly globose to low-conic in shape.

Based on the most recent information, the species is found in over 100 small thermal springs and seeps along an 8 km length of the Bruneau River in southwestern Idaho (Mladenka 1992). No Bruneau Hot Spring snails have been collected outside thermal plumes of hot springs entering the Bruneau River. The species is normally collected in springs with seasonally fluctuating water temperatures greater than 20°C, with the maximum temperature tolerance limit of 35°C. The species is found in these

habitats on all substrate types, including rocks, gravel, mud, silt, and algal film. These springs and proximal thermal outflows are on lands administered by the Bureau of Land Management. Some downstream habitat is on private land.

The major threat to the Bruneau Hot Spring snail is the reduction of its thermal spring habitats from groundwater withdrawal/mining in the Bruneau Hot Spring aquifer. Exacerbated by drought, the extent of seepage at spring sources has been greatly reduced in recent years. In addition, considerable habitat has been lost in recent years due to sedimentation from flash flooding. This is especially true for the Indian Bathtub area, where the snail was first discovered. Heavy sedimentation of gravel, sand, and silt has rendered a considerable amount of habitat in the Indian Bathtub unavailable to snails.

Dr. Dwight Taylor prepared a status report on the Bruneau Hot Spring snail, which was submitted to the Service in June 1982. This report was the basis for the placement of this species on the Service's comprehensive notice of review on invertebrate candidate species published in the **Federal Register** (49 FR 21664) on May 24, 1984. The Service proposed the Bruneau Hot Spring snail for listing as endangered on August 21, 1985 (50 FR 33803). The comment period on this proposal, which originally closed on October 21, 1985, was extended to December 31, 1985 (50 FR 45443). To accommodate public hearings in Boise, Idaho, and Bruneau, Idaho, the comment period was reopened until February 1, 1986 (50 FR 51894). On December 30, 1986, the public comment period was again reopened until February 6, 1987, to accommodate the receipt of additional information (52 FR 47033).

In 1990, Congress allocated approximately $400,000 for conservation measures associated with the Bruneau Hot Spring snail. This money was used to fund hydrological studies of the Bruneau Hot Spring aquifer by the U.S. Geological Survey and ecological life history studies by the Idaho State University.

The Service provided funding to implement a short-term conservation easement with Owen Ranches, Inc., owners of much of the snail habitat in Hot Creek and the Indian Bathtub. Terms of the easement included fencing to exclude cattle from grazing along snail habitats in Hot Creek. Expiration of this agreement will coincide with the completion of the hydrological studies by the U.S. Geological Survey.

On July 6, 1992, the Idaho Conservation League and the Committee for Idaho's High Desert filed a lawsuit in Federal District Court in Boise, Idaho. The lawsuit was filed under the Endangered Species Act of 1973, as amended, over the failure of the Service to make a decision regarding the listing of the Bruneau Hot Spring snail.

In order to respond to the concerns raised in the lawsuit and to ensure the accuracy of any final decision concerning the appropriateness of listing, the Service reopened the public comment period on October 5, 1992, for 30 days to solicit any additional new information available for consideration. However, after the comment period closed on November 4, 1992, the Service published a notice in the Idaho Statesman announcing that the comment period was open. In response to this newspaper notice, several individuals expressed an interest in submitting comments; however, the Service could not officially consider those comments since the public comment period had closed. For this reason, the Service reopens the public comment period on the proposed rule for 10 days. The Service's goal is to base its final decision on the best available scientific and commercial information. Written comments may now be submitted for this proposal until December 28, 1992. The Service continues to be particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

The final decision on this issue will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final decision that differs from the proposal to list the species. Comments and data concerning this species should be sent to the Boise Field Office (see **ADDRESSES** section).

References

Hershler, R. 1990. *Pyrgulopsis bruneauensis*, a new springsnail (Gastropoda: Hydrobiidae) from the Snake River plain, southern Idaho. Proc. Biol. Soc. Wash. 103(4), 1990, pp. 803–814.

Mladenka, G.C. 1992. The ecological life history of the Bruneau Hot Spring snail (*Pyrgulopsis bruneauensis*). Final report submitted to the Fish and Wildlife Service. Stream Ecology Center, Department of Biological Sciences, Idaho State University, Pocatello, Idaho. 116 pp.

Author

The primary author of this notice is Mr. Stephen Duke, Fish and Wildlife Service, Boise Field Office, 4696 Overland Road, Room 576, Boise, Idaho 83705, (208) 334–1931.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 11, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–30664 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Public Comment Period on Proposed Endangered Status for the Giant Garter Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), gives notice that the public comment period is reopened on the proposed determination of endangered status for the giant garter snake (*Thamnophis gigas*). The reopening of the comment period will allow all interested parties to submit written comments on the proposal.

DATES: The comment period on the proposal is opened until December 28, 1992. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Peter Sorensen (see **ADDRESSES**) at 916/978–4866.

SUPPLEMENTARY INFORMATION:

Background

The giant garter snake is restricted to valley floor wetlands, including low gradient streams, ponds, irrigation and drainage canals, and certain rice field habitats in the San Joaquin and Sacramento Valleys of California. Approximately 13 apparently isolated populations are distributed locally from Burrell, Fresno County, northward to the vicinity of Chico, Butte County. The giant garter snake is threatened by a variety of factors, including urbanization, flood control and water diversion projects, and agricultural practices.

A proposal to list the giant garter snake as an endangered species was published on December 27, 1991 at 56 FR 67046. Subsequently, the Service published a notice announcing a public hearing on May 15, 1992 (57 FR 20806) and a separate notice on May 26, 1992 (57 FR 21933) reopening the public comment period until July 15, 1992. The Service conducted the public hearing on June 1, 1992, at the Radisson Hotel in Sacramento, California. Testimony was taken from 6 p.m. to 8 p.m. The Service is aware of information on the status of the giant garter snake that has become available since that time. Reopening the comment period will allow the Service to consider this and any other information in determining whether or not the giant garter snake warrants listing as an endangered species. Additional information may now be submitted until the end of the comment period on December 28, 1992.

Author

The primary author of this notice is Peter C. Sorensen (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 11, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–30665 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 921077–2277]

Endangered and Threatened Species; Saimaa Seal

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: Based on a review of the status of the Saimaa seal (*Phoca hispida saimensis*), NMFS has determined that this species is endangered and should be added to the U.S. List of Endangered and Threatened Wildlife. NMFS used the best available scientific and commercial data to make this determination. Scientists estimate the population at about 160–180, and they are found only in Lake Saimaa, in eastern Findland.

DATES: Comments on the proposed rule should be received by February 16, 1993.

ADDRESSES: Send comments to Dr. Michael F. Tillman, Acting Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Office of Protected Resources, NMFS, at 301/713–2322.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (16 U.S.C. 1531, *et seq.*; (ESA)) is administered jointly by the U.S. Fish and Wildlife Service (USFWS), the Department of the Interior, and NMFS. NMFS has jurisdiction over most marine species and makes determinations under section 4(a) of the ESA (Pub. L. 93–205) as to whether the species should be listed as endangered or threatened. The USFWS maintains and publishes the List of Endangered and Threatened Wildlife in 50 CFR part 17 for all species determined by NMFS or USFWS to be endangered or threatened. A list of threatened and endangered species under the jurisdiction of NMFS also is contained in 50 CFR 227.4 and 222.23(a), respectively.

The ESA defines "species" to include any subspecies of fish, wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

Summary of Status Review

The Saimaa seal (*Phoca hispida saimensis*) is a subspecies of the ringed seal (*Phoca hispida*) that is limited in distribution to the freshwater Lake Saimaa in eastern Finland. It has been separated from other ringed seals since the last glacial period, 8,000 years ago (Sipilä *et al.* 1990).

There are differences between the Saimaa seal and other ringed seals. In general, the pelage of the Saimaa seal is darker than ringed seals from Lake Ladoga and the Baltic Sea. Saimaa seal pups are gray, rather than white, indicating that camouflage may be less important. Morphologically, the Saimaa seal can be distinguished from other ringed seals. Measurements of bones in the skull differ from both the ringed seal in the Baltic Sea and the Ladoga seal, another subspecies of the ringed seal. The auditory bulla are higher, indicating a possible adaptation to the low visibility conditions in Lake Saimaa (Hyvärinen 1989; Hyvärinen and Vieminen 1990). There is evidence that the seals' sense of hearing has been adapted to these conditions. The Saimaa seal's vibrissae, or whiskers, may be used to detect sounds. The innervation of one vibrissa of the Saimaa seal is more than ten times greater than in any other mammal or any other ringed seal. It is hypothesized that sounds are detected through sensory elements in the vibrissae (Hyvärinen 1989).

There are only about 160–180 Saimaa seals (Sipilä 1990, 1991; Sipilä *et al.* 1990). Concern over the status of the population was first expressed in the early 1950s when the Government of Finland prohibited hunting of the seals (Sipilä and Hyvärinen 1988). The first estimate of total population was 200–250 animals, based on a limited sample area. A more comprehensive survey produced an estimate of at least 250 animals in 1971. Between 1971 and 1984, the number continued to decrease. A census conducted in 1984 produced a best estimate of 130–160 seals (Hyvärinen and Sipilä 1983; Sipilä 1990; Sipilä and Hyvärinen 1988; Sipilä *et al.* 1990). Since then, numbers have remained relatively stable. The most vigorous populations are in the central part of Lake Saimaa, both north and south of the town of Savonlinna. The northern part of Lake Saimaa has a smaller population. There has been a marked decline of the population in the

southern part of the lake. As an example, in 1971, it was estimated that the number of seals in the Petranselkä-Ilkonselkä area was 44–46. The corresponding estimate for 1984 was 14–16. In other areas in the south where seals were present historically, such as Puruvesi and Yövesi, none remain (Sipilä *et al.* 1990). Although studies of migrations between areas of the lake have not been conducted, one study indicated that there are four distinct colonies (Hyvärinen and Sipilä 1984a). The possibility of limited genetic exchange among subpopulations raises further concerns over the status of the seals in the northern and southern parts of the lake.

Although no data are available on the longevity of the Saimaa seal, the life-span for ringed seals generally is estimated at 15 to 25 years (Riedman 1990). Similar to other ringed seals, the sex ratio the Saimaa seals is 1:1 (Sipilä *et al.* 1990; Sipilä 1991). One study estimated that 55.7 percent of the population is sexually mature. The same study provided an estimate of approximately 39 reproductive females in the population. The pregnancy rate in mature females has been estimated at up to 70 percent per annum (Sipilä *et al.* 1990). The number of births has been estimated at 18–26 pups annually. Examinations of birth lairs indicated that 19 percent of the pups born were still-born or died before weaning.

The overall reproductive rate for the population is estimated at 15 percent annually, which is low when compared to other populations of ringed seals (Sipilä and Kurlin 1991; Sipilä *et al.* 1990).

The Government of Finland has taken measures to protect the species. In 1955, a law was passed to prohibit the hunting of Saimaa seals (Sipilä and Hyvärinen 1988). In 1982, another law was passed to restrict fishing in some areas during periods when interactions were occurring with seal pups. Before the fishing restrictions, entanglement in fishing gear was a significant cause of pup mortality (Sipilä *et al.* 1990). Of eight breeding areas, the Government of Finland has protected three by creating natural parks (Sipilä 1989).

It is thought that a listing action in the United States would make it easier to obtain international funds to promote conservation of the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and the NMFS listing regulations set forth procedures for listing species. The Secretary of Commerce must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) Inadequacy of existing regulatory mechanisms; or

(5) Other natural or man-made factors affecting its continued existence.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Housing developments have affected the habitat of the Saimaa seal. Construction of summer cottages and increased human activity have caused the seals to abandon some breeding areas (Sipilä 1989, 1991; Sipilä and Hyvärinen 1988).

Additionally, drawing down of water levels of up to 50 centimeters for hydroelectric generation has affected habitat and breeding success (Sipilä 1990). Birth lairs are constructed in the ice and rest along the shoreline. When water levels are reduced, there is a tendency for the birth lairs to collapse, crushing the pups or rendering them homeless with no protection from the cold (Sipilä 1988, 1990; Sipilä and Hyvärinen 1988).

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is no evidence that these activities have contributed to the decline of the species.

Disease or Predation

No evidence exists that disease or predation has been responsible for the decline in population. With such a small number of animals, however, the population could be vulnerable to the introduction of a disease. As an example of the potential vulnerability to disease, the introduction of phocine distemper virus into seal populations in Lake Baikal and the North Sea resulted in massive mortalities (Osterhaus *et al.* 1990). A similar outbreak could lead to the extinction of the Saimaa seal.

The Inadequacy of Existing Regulatory Mechanisms

The Government of Finland has taken measures to protect the Saimaa seal. In 1955, a law was passed to prevent direct hunting of the species (Sipilä and Hyvärinen 1988). In 1981, a law was passed to stop net-fishing in some areas of Lake Saimaa (Sipilä 1990; Sipilä *et al.* 1990;). However, not all areas of the lake are protected. Natural parks have been set up to ensure the safety of the seals in some areas (Sipilä 1989). Despite these measures, the population of seals has continued to decrease in some areas.

Other Natural or Man-made Factors

As discussed earlier, the generation of hydroelectricity has had an impact on the Saimaa seal. Although there are restrictions against fishing in some areas in Lake Saimaa, net fishing has caused the Saimaa seal's population to decline (Hyvärinen and Sipilä 1984a; Sipilä 1989; Sipilä and Hyvärinen 1988; Sipilä *et al.* 1990;). Seal pups are particularly vulnerable to fishery interactions after they have been weaned. Before fishing restrictions were imposed in 1981, mortality of pups caused by fishing interactions was estimated to be as high as 60 percent. Restrictions appear to have reduced this figure to 40 percent in those areas with restrictions. However, even that percentage represents a significant cause of mortality (Sipilä *et al.* 1990).

The genetic pool is so small that there is a serious possibility that inbreeding could result in a loss of genetic variability, resulting in the loss of capacity to adapt to changes or in genetic defects. This problem would be exacerbated if there is site fidelity and limited genetic flow between subpopulations.

Some researchers have indicated that pollution may have an impact on the population (Helle *et al.* 1985; Hyvärinen and Sipilä 1984b; Kari and Kauranen 1978; Perttilä *et al.* 1986; Sipilä and Hyvärinen 1988). However, no direct cause and effect relationship has been established. Analyses have shown that Saimaa seal tissues have relatively high levels of heavy metals such as nickel, zinc, copper, lead, and cadmium (Hyvärinen and Sipilä 1984b; Perttilä *et al.* 1986). High levels of nickel have been found in the natal hair of seal pups. High levels of nickel may be linked to the still-births of the pups (Hyvärinen and Sipilä 1984b). One study indicated high mercury and selenium levels in the seal's liver tissue. Other studies have linked mercury and selenium and it has been suggested that selenium serves a role in metabolizing mercury in seals (Kari and Kauranen 1978; Perttilä *et al.* 1986). The ratio of selenium to mercury in Saimaa seals, however, is lower than in other seals from the Baltic area, which may indicate that mercury levels may be cause for concern (Kari and Kauranen 1978).

Although levels of organochlorines in tissue are relatively high, they are lower than levels recorded in ringed seals in

the Baltic. Studies have shown a high correlation between PCBs and reproductive abnormalities in seal population in the Baltic Sea and the North Sea. A high level of uterine occlusions was found in ringed seals with high PCBs in the Baltic Sea (Helle 1980). A reduction in fertility of harbor seals in the North Sea is correlated with PCB levels (Reijnders 1984, 1986). The author hypothesized that the contaminant might affect fertility by altering hormonal levels (Reijnders 1986). Although levels of DDT in Saimaa seal blubber have fallen since the early 1970s, levels of PCBs have remained relatively constant (Helle *et al.* 1983, 1985; Perttilä 1986).

Proposed Determination

NMFS believes that the available data support the proposed endangered classification for the Saimaa seal. NMFS has determined that it is likely that this condition is caused by a combination of the factors specified under section 4(a)(1) of the ESA.

Recommended Critical Habitat

Regulations regarding listing of species and designation of critical habitat (50 CFR 424.12(h)), specify that critical habitat cannot be designated in foreign countries or other areas outside U.S. jurisdiction.

Classification

The 1982 Amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 829 (6th cir., 1981), NMFS has categorically excluded all endangered species listings from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413; February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of E.O. 12291 and the Regulatory Flexibility Act are not applicable to the listing process. Similarly, listing actions are not subject to the requirements of E.O. 12612. For this reason, the provisions in this rule are not subject to the moratorium on regulatory actions in accordance with paragraph 4 of the President's January 28, 1992, Directive.

The proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

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List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: December 10, 1992.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 222 is proposed to be amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

§ 222.23 [Amended]

2. In § 222.23, paragraph (a), introductory text, is amended by adding the phrase "Saimaa seal (*Phoca hispida saimensis*);" immediately after the phrase "Mediterranean monk seal (*Monachus monachus*);" in the second sentence.

[FR Doc. 92–30630 Filed 12–17–92; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 244
Friday, December 18, 1992

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. 92-168-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
92-244-02, renewal of permit 92-066-01, issued on 06-04-92.	Holden's Foundation Seeds, Incorporated.	08-31-92	Corn plants genetically engineered to express a phosphinothricin acetyl transferase (PAT) gene for tolerance to the herbicide glufosinate.	Hawaii.
92-203-01	Pioneer Hi-Bred International, Incorporated.	10-16-92	Soybean plants genetically engineered to express either the enzyme 5-enolpyruvyl shikimate-3-phosphate snythase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate; or methionine- and cysteine-rich seed storage proteins from Brazil nut.	Puerto Rico.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 14th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30771 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-188-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits To Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
92-209-03	Monsanto Agricultural Company.	11-18-92	Corn plants genetically engineered to express a gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk) for resistance to lepidopteran insects, or genes for tolerance to the herbicide glyphosate, or a beta-glucuronidase (GUS) as a marker.	Hawaii.
92-260-02	Monsanto Agricultural Company.	11-19-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Puerto Rico.
92-261-01	Monsanto Agricultural Company.	11-20-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Florida, Illinois.
92-255-01	ICI Seeds, Incorporated	11-23-92	Corn plants genetically engineered to express genes from a non-pathogenic source organism and resistance to the herbicide glufosinate.	Hawaii.
92-262-02	Monsanto Agricultural Company.	11-23-92	Potato plants genetically engineered to express a from *Bacillus thuringiensis* subsp. *tenebrionis* (Btt) for resistance to Colorado potato beetle, and the coat protein gene of potato virus Y (PVY) for resistance to PVY.	Florida, Hawaii.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 14th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30773 Filed 12-17-92; 8:45 am]

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[Docket No. 92-182-1]

Receipt of Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of the document by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests" require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation of interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-308-01, renewal of permit 90-274-05, issued on 11-15-90.	Upjohn Company	11-03-92	Soybean plants genetically engineered to express the enzyme phosphinothricin acetyltransferase (PAT) for tolerance to the herbicide bialaphos.	Puerto Rico.

Done in Washington, DC, this 14th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30772 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-189-1]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. You may obtain copies of the documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests of Which There Is Reason to Believe Are Plant Pests." require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-325-01, renewal of permit 92-036-01, issued on 05-26-92.	Washington State University	11-20-92	Potato plants genetically engineered to express disease resistance response genes from the pea.	Washington.
92-329-01	Crop Genetics International	11-24-92	Corn plants containing *Clavibacterxyli* subsp. *cynodontis* genetically engineered to express a *Bacillus thuringiensis* subsp. *kurstaki* strain HD-73 delta-endotoxin protein for resistance to European corn borer.	Iowa, Maryland, Nebraska.

Application No.	Applicant	Date received	Organisms	Field test location
92-330-01	Pioneer Hi-Bred International Incorporate.	11-25-92	Corn plants genetically engineered to express resistance to European corn borer and other insect pests of corn.	Hawaii.
92-330-02, renewal of permit 91-322-01; issued on 02-04-92.	North Carolina State University.	11-25-92	Tobacco plants genetically engineered to express a coat protein of tobacco etch virus (TEV).	North Carolina.
92-335-01, renewal of permit 92-037-03, issued on 05-19-92; of permit 92-037-05, issued on 05-01-92; of permit 92-055-01, issued on 05-20-92.	Monsanto Agricultural Company.	11-30-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nebraska, Ohio, South Carolina, Tennessee, Texas, Virginia, Wisconsin.

Done in Washington, DC, this 14th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-30774 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Midway Face Viewshed Management Project, Dixie National Forest, Iron County, Utah

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Midway Face Viewshed Management project was published in the **Federal Register** on October 24, 1991 (56 FR 55116). After examining the analysis to date in light of the 10 points of significance, 40 CFR 1509.27, I believe it is unlikely that there will be a significant impact on the human environment; therefore, an EIS will not be prepared. The project analysis will be documented in an Environmental Assessment. Additional public involvement with this project is planned prior to the release of the Environmental Assessment; tentatively scheduled for May 1993.

FOR FURTHER INFORMATION CONTACT: Diana McGinn, Forester, Cedar City Ranger District, P.O. Box 627, Cedar City, Utah 84721-0627, 801-865-3200.

Dated: December 11, 1992.

Dan Deiss,

Timber Staff Officer.

[FR Doc. 92-30749 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-11-M

Pacer Timber Sale, Dixie National Forest, Garfield County, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for a Forest Service proposal to implement a timber sale and associated road construction on the Escalante Ranger District, Dixie National Forest. The area is located approximately 25 miles northwest of Escalante, Utah. The project would be implemented in accordance with direction in the Dixie National Forest Land and Resource Management plan (DNF-LRMP).

The agency gives notice that the environmental analysis process is underway. Interested and potentially affected persons, along with local, state, and other Federal agencies, are invited to participate and contribute to the environmental analysis. The Dixie National Forest invites written input regarding issues specific to the proposed action.

DATES: Written comments to be considered in the Draft Environmental Impact Statement (DEIS) should be submitted on or before February 1, 1993.

ADDRESSES: Submit written comments to: District Ranger, Escalante Ranger District, 755 West Main, P.O. Box 246, Escalante, Utah 84726.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Kevin R. Schulkoski, District Ranger, 801-826-5400.

SUPPLEMENTARY INFORMATION: The proposed project covers an analysis area of 3,364 acres of National Forest System Lands. Timber stands in the project area cover 3,079 acres. Unevenaged stands of Engelmann spruce and subalpine fir is the dominant timber type. A few stands of even-aged Engelmann spruce is also present as are even-aged stands of aspen. Aspen remnants are also scattered throughout the Engelmann spruce/subalpine fir stands. Stands proposed for harvest are located within sections 25, 26, 35, and 36, Township 32 South, Range 1 West; and Sections 1, 2, and 11, Township 33 South, Range 1 West, Salt Lake Base Meridian.

The proposed action would implement management direction and projects identified in the DNF-LRMP. This project EIS will be tiered to the DNF-LRMP EIS, which provides goals, objectives, standards and guidelines for the various activities and land allocations on the Forest.

The purpose of the proposed action is to improve growth and yield and to reduce the potential for a spuce beetle outbreak through improved forest health. The proposed action is to harvest diseased or insect infected trees, high risk trees, and to obtain the desired stocking levels utilizing a combination of individual tree and group selection and improvement harvest methods. These treatments would be designed to move the project area towards the desired habitat conditions as described in the "Management Recommendations for the Northern Goshawk in the Southwestern United States." The proposed action would be located in Management Areas 7A (Wood Products and Utilization), 6A (Livestock Grazing), and 2B (Rural and Roaded Recreation Opportunities).

The proposed action consists of commercial timber harvest within Management Areas 7A, 6A, and 2B using uneven-aged and even-aged management and yielding approximately 5.5 MMBF of Engelmann spruce, subalpine fir, and aspen sawtimber. Post sale activities would include brush disposal, precommercial thinning and reforestation.

Approximately 333 acres (10% of the analysis area) would be managed for old growth habitat.

Road Management would include development of a transportation plan requiring approximately nine miles of road construction and 12 miles of road reconstruction and reconditioning. Seasonal gated closures would be utilized on sale area roads during post

harvest activities. After completion of these activities, the area would be closed to motorized traffic via an area closure, with the exception of three existing motorized trails which currently cross the area. This would bring the post-sale open road density down to .9 miles per square mile.

Preliminary issues that have been identified through scoping to date include project effects on: Availability of forest products; forest health; Threatened, Endangered, Sensitive, and Proposed species; Wildlife habitat; Biodiversity; Quality of the recreational experience; Old growth habitat; Watershed; Open road density and its effects on wildlife use; Cultural resources; Access and recreation opportunities; and the cost of harvest activities may affect the viability of the sale.

Tentative alternatives to the proposed action include: No action (the project will not take place but current management will continue); maximization of short term benefit by using a combination of even-aged and uneven-aged treatments in the conifer with an open road density reduction to .6 miles per square mile; an alternative to maximize timber production; and alternative to maximize the economics of the sale; and low intensity timber management to emphasize enhancement of wildlife habitat, visual, and recreational values.

As lead agency, the Forest Service will analyze and document direct, indirect, and cumulative environmental effects of a range of alternatives. Each alternative will include mitigation measures and monitoring requirements.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest, is the responsible official.

The Forest Service is seeking comments from individuals, organizations, and local, state, and Federal agencies who may be interested in or affected by the proposed action.

Scoping notices have been sent to the Dixie National Forest NEPA mailing list. Other interested individuals, organizations, or agencies may have their names added to the mailing list for this project at any time by submitting a request to: Kevin R. Schulkoski, District Ranger, Escalante Ranger District, 755 West Main, P.O. Box 246, Escalante; Utah, 84726.

The entire analysis area lies within National Forest System lands. No Federal or local permits, licenses or entitlements would be needed. There are no potential conflicts with the plans and policies of other jurisdictions.

The comment period on the Draft EIS will be 45 days from the date of the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at this time. To be most helpful, comments on the DEIS should be as specific as possible and may discuss the adequacy of the statement or the merits of the alternatives discussed (see CEQ Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of the DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the FEIS, *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334. 1338 (E.D. Wis. 1980). This is to ensure that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final EIS.

The DEIS is expected to be available for review by February 15, 1993. The Record of Decision and Final Environmental Impact Statement are expected to be available by May, 1993.

Dated: December 11, 1992.

Dan Deiss,

Timber Staff Officer, Dixie National Forest.

[FR Doc. 92-30750 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-11-M

Withdrawal of the Record of Decision for the South Fork Fire Recovery/ Salvage Project

SUMMARY: The Forest Service has withdrawn its August 17, 1988, Record of Decision for the South Fork Fire Recovery/Salvage Project in the Shasta-Trinity National Forests; Trinity County, California.

DATES: December 8, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about the withdrawal of the Record of Decision for the South Fork Fire Recovery/Salvage Project should be directed to Jerry B. Brogan, Timber Management Officer, Shasta-Trinity National Forests, 2400 Washington Avenue, Redding, CA 96001. Telephone (916) 246-5380.

SUPPLEMENTARY INFORMATION: In 1987, the Shasta-Trinity NF was struck by a series of massive fires. Those fires damaged valuable trees and wildlife habitat, and denuded watersheds of protective vegetation. In response, the Forest Service studied how to respond to the widespread devastation, and prepared an EIS addressing the South Fork Fire Recovery/Salvage Project. That project included the harvest of the damaged trees, and provided for a series of habitat recovery actions. Shortly after the Record of Decision approving the project was signed, a number of parties filed a lawsuit in the United States District Court for the Eastern District of California seeking to enjoin the Forest Service from proceeding with the recovery project. Judge Karlton enjoined the project, and that injunction remains in place today, even though there is no decision on the merits that the Forest Service has violated any law.

A number of factors have caused me to re-evaluate the decision to proceed with the South Fork Fire Recovery/ Salvage Project, and to withdraw the Record of Decision. First, more than five years have passed since the fires, and a significant number of the dead trees that were identified for harvest are no longer of any merchantable value. With the court processes we have seen over the last five years, I consider it unlikely that we would be able to proceed with a timber sale contract prior to the 1994 field season.

Second, since the original decision was made, both the northern spotted owl and the marbled murrelet have been listed as threatened species. While the record demonstrates that we have fully complied with all obligations of the Endangered Species Act with regard to the northern spotted owl, the recent listing of the marbled murrelet would require additional analysis of the project to assure compliance with that Act.

Third, Regional Forester Ronald E. Stewart approved the Record of Decision for the South Fork Trinity River Wild and Scenic River Management Plan. While the recovery project is consistent with that plan, I believe it is appropriate to proceed to implement that plan without this litigation

Fourth, a recovery project that we would design today would vary in some respects from the recovery project that was designed in 1988. Even if we were to proceed with this particular project, we would need to make changes to the contract that was offered in 1988.

Finally, we are undergoing a significant downsizing of our staff on the Shasta-Trinity National Forests. With this reduction, I believe our limited resources are more effectively allocated to planning future activities to benefit the Forest and the community

than to continue to divert them to this litigation.

Therefore, I am withdrawing the Record of Decision for the South Fork Fire Recovery/Salvage Project, effective immediately.

Dated: December 8, 1992.

William V. Carpenter,

Acting Forest Supervisor, Shasta-Trinity National Forests.

[FR Doc. 92-30695 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-11-M

Grand Targhee Resort Master Development Plan, Targhee National Forest, Teton County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the comment period on the Draft EIS for the Grand Targhee Master Development Plan (57 FR 56557, November 30, 1992) for a period of 43 days. This is the second extension of the comment period that has been approved for this DEIS. The original comment period ended November 20, 1992. The comment period will end February 1, 1993. The extension is granted based upon requests, from the Grand Targhee Resort and Jackson Hole Alliance For Responsible Planning, for additional time to thoroughly assess all the information contained in the document. The current deadline of December 20, 1992 falling in the middle of the holiday season and understanding the concerns of the primary parties affected by the EIS were also given as reasons for extending the deadline.

FOR FURTHER INFORMATION CONTACT: Lynn Ballard, Interdisciplinary Team Leader (208) 624-3151, Targhee National Forest, P.O. Box 208, St. Anthony, ID 83445.

Dated: December 10, 1992.

James L. Caswell,

Forest Supervisor.

[FR Doc. 92-30625 Filed 12-17-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

The Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee (CSTAC) will be held January 13 & 14, 1993, in the Herbert C. Hoover Building, room 1617M-2, 14st Street & Pennsylvania Avenue, NW., Washington, DC. The CSTAC advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems, peripherals and technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482-2583.

Dated: December 10, 1992.

Betty Anne Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 92-30711 Filed 12-17-92; 8:45 am]

BILLING CODE 3510-DT-M

Economics and Statistics Administration

[Docket No. 920946-2246]

Plan to Produce a National Economic, Social, and Environmental Data Bank (NESE.DB) on an Experimental Basis

AGENCY: Economics and Statistics Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: This notice and request for comments seeks public comment(s) on the contents of a proposed National Economic, Social, and Environmental Data Bank, described herein. The Department of Commerce plans to produce a National Economic, Social, and Environmental Data Bank (NESE.DB) on an experimental basis in CD-ROM format using the Browse software and standard data formats of the National Trade Data Bank (NTDB). The NESE.DB will be a quarterly product containing core domestic data from all Federal agencies that wish to contribute. A prototype CD-ROM has been produced containing contributions from 15 agencies. The Department will prepare six quarterly issues of the NESE.DB on a test basis, starting with the fall issue of October 1992. Single issues will be sold for $95.00 and annul subscriptions (4 issues) for $360.00. If subscriptions and single disc sales are sufficient to make the project self-financing, the NESE.DB will become a permanent information product.

DATES: Comments regarding the contents of the proposed National Economic, Social, and Environmental Data Bank must be submitted on or before January 19, 1993.

ADDRESSES: Written comments should be addressed to: John E. Cremeans, Director, Office of Business Analysis, Economics and Statistics Administration, room H4878, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Contact John E. Cremeans, 202/482-1405.

SUPPLEMENTARY INFORMATION: The Department's National Trade Data Bank has been extraordinarily successful and has made export promotion data, trade data, and international economic data available to the public throughout the country in an accessible and inexpensive form. The software, procedures, and product development work done for the NTDB can be used with no additional cost in the creation of a domestic data bank with similar advantages. A prototype disc was produced in April 1992, and extensive testing has shown that the project is practicable and that operating costs can be expected to be both modest and self-financing through sales of the discs. The startup costs are being financed through the Department's "Pioneer Fund" procedure. Single discs and subscriptions to the NESE.DB may be ordered by calling 202/482-1986.

The prototype NESE.DB contains:

Council of Economic Advisers:
- Economic Report of the President, 1992

Office of Management and Budget:
- Budget of the United States—Historical Tables

U.S. Department of Commerce

Economics and Statistics Administration

Office of Business Analysis:
- Capital Stocks Data Base
- National Energy Accounts

Bureau of the Census:
- Summary demographic data from the 1990 Decennial Census

Census of Manufactures, 1987—selected tables
Statistical Abstract—selected construction industry tables
Bureau of Economic Analysis:
Business Cycle Indicators
Annual input-output tables
Business Statistics
Fixed Tangible Wealth of the U.S.
Gross State Product Originating
National Income and Product Accounts—Quarterly and Annual Data
Regional Projections to 2040

International Trade Administration

1992 U.S. Industrial Outlook

National Oceanic and Atmospheric Administration

National Environmental Satellite Data Service:
Average Weather Conditions at Meteorological Stations in the U.S.

U.S. Department of Education

National Center for Education Statistics

Digest of Educational Statistics, 1991

U.S. Department of Energy

Energy Information Administration

Annual Energy Review, 1991

U.S. Department of Health and Human Services

National Center for Health Statistics

Health Statistics, 1991

U.S. Department of Justice

Bureau of Justice Statistics

Criminal Victimization in the U.S., 1990
Capital Punishment, 1990
Crime and the Nation's Households
Drugs and Jail Inmates, 1989
Felony Sentences in State Courts, 1988
Female Victims of Violent Crimes
Jail Inmates, 1990
Prisoners in 1990
Profile of Jail Inmates
Probation and Parole, 1990
School Crime
Women in Prison

U.S. Department of Transportation

Airline On-time Arrival and Departure Data

Congressional Budget Office

The Economic and Budget Outlook: Fiscal Years 1993–1997

Environmental Protection Agency

Toxics in the Community

Federal Reserve System

Federal Reserve Bank of Boston

New England Economic Indicators

Authority: 15 U.S.C. Section 1501 *et seq.*

Susanne H. Howard,

Deputy Under Secretary, Economics and Statistics Administration.

[FR Doc. 92–30712 Filed 12–17–92; 8:45 am]

BILLING CODE 3510–EA–M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trade Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trade Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92–00013." A summary of the application follows.

Summary of the Application

Applicant: General Aviation Manufacturers Association, Inc. ("GAMA"), 1400 K Street, N.W., suite 801, Washington, DC 20005, Contact: Edward W. Stimpson, Telephone: (202) 393–1500.

Application No.: 92–00013.

Date Deemed Submitted: December 8, 1992.

Members (in addition to applicant): Advanced Industries, Inc., Wichita, KS; Aircraft Technical Publishers, Brisbane, CA; Aire-Sciences, Inc., Fairfield, NJ; Airtechnics, Inc., Wichita, KS; Allied-Signal General Aviation Avionics, Olathe, KS (Controlling Entity: Allied-Signal Aerospace, Torrance, CA); Garrett General Aviation Services, Phoenix, AZ (Controlling Entity: Allied-Signal Aerospace, Torrance, CA); Allison Gas Turbine Division, Indianapolis, IN (Controlling Entity: General Motors, Detroit, MI); American General Aircraft Corp, Greenville, MS; Ametek, Inc. US Gauge Div., Sellersville, PA (Controlling Entity: Ametek, Inc., Wilmington, MA); Aviation Simulation Technology, Inc., Bedford, MA; B & D Instruments and Avionics, Inc, Valley Center, KS (Controlling Entity: Bowthorpe Holdings, PLC, Sussex, England); Beech Aircraft Corporation, Wichita, KS (Controlling Entity: Raytheon Corporation, Lexington, MA); BFGoodrich Aerospace, Akron, OH (Controlling Entity: BFGoodrich Company, Jacksonville, FL); Century Flight Systems, Inc., Mineral Wells, TX; Cessna Aircraft Company, Wichita, KS (Controlling Entity: Textron, Inc., Providence, RI); Collins Commerical Avionics, Cedar Rapids, IA (Controlling Entity: Rockwell International Corp., Seal Beach, CA); Hydro-Aire Division, Burbank, CA (Controlling Entity: Crane Company, New York, NY); The Dee Howard Company, San Antonio, TX (Controlling Entity: Alenia S.P.A., Naples, Italy); Dukes, Inc., Northridge, CA; Elano Corporation, Dayton, OH (Controlling Entity: GE Aircraft Engines, Cincinnati, OH); ERDA, Inc., Peshtigo, WI; Fairchild Aircraft Incorporated, San Antonio, TX; FlightSafety International, Inc., New York, NY; Global-Wulfsberg Systems, Irvine, CA (Controlling Entity: Sundstrand Corporation, Rockford, IL); Gulfstream Aerospace Corp, Savannah, GA; Hartzell Propeller, Inc., Piqua, OH; Honeywell, Inc., Phoenix, AZ (Controlling Entity: Honeywell, Inc., Minneapolis, MN); Jeppesen Sanderson, Inc., Englewood, CO; Learjet, Incorporated, Wichita, KS (Controlling Entity: Bombardier, Inc., West, Montreal PQ, Canada); Lucas Aerospace Power Equip. Company, Aurora, OH (Controlling Entity: Lucas Aerospace LTD., W. Midlands, England); Marathon Power Technologies, Waco, TX; Mooney Aircraft Corp., Kerrville, TX; Parker Bertea Aerospace Group, Irvine, CA (Controlling Entity: Parker Hannifin Corp., Cleveland, OH); Piper Aircraft Corp., Vero Beach, FL; Precision

Airmotive Corporation, Everett, WA; Sabreliner Corporation, Chesterfield, MO; SimuFlite Training International, Dallas/Fort Worth, TX; Teledyne Continental Motors, Mobile, AL (Controlling Entity: Teledyne, Inc., Los Angeles, CA); Textron Lycoming Turbine Engine Div., Stratford, CT (Controlling Entity: Textron, Inc., Providence, RI); Textron Lycoming Recipicating Engine Div., Williamsport, PA (Controlling Entity: Textron, Inc., Providence, RI); Unison Industries, Inc., Jacksonville, FL; United Technologies Corporation, Longueuil, Quebec, Canada (Controlling Entity: United Technologies Corp., Hartford, CT); Universal Navigation Corporation, Tuscon, AZ; Whittaker Controls, Inc., North Hollywood, CA; Williams International, Walled Lake, MI; and Woodward Governor Company, Rockford, IL.

GAMA seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Export Trade Facilitation Services

Export trade promotion and facilitation activities for its Members, including: Consulting, coordination, and negotiation of the terms and conditions of participation in trade promotion activities such as air shows, trade shows, expositions, exhibitions, conferences, or similar events.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

GAMA and one or more of its Members may:

1. Agree on which foreign air shows, trade shows, expositions, exhibitions and conferences to attend, duration of attendance, level of participation and size or content or displays;
2. Refuse to attend specific foreign air shows, trade shows, expositions, exhibitions or conferences;
3. Jointly negotiate with sponsors or hosts of foreign air shows, trade shows, expositions, exhibitions, and conferences on frequency, duration, costs, and all other terms and conditions of participation in such events;
4. Jointly negotiate with providers of transportation services, intermodal shipments, insurance, or documentation for airframes, engines, and other equipment used at foreign air shows, trade shows, expositions, or conferences;
5. Jointly negotiate with providers of ancillary services, such as hotels, local transportation companies, and caterers, in connection with participation in foreign air shows, trade shows, expositions, exhibitions, and conferences.
6. Exchange and discuss information relevant to the conduct identified in 1–5.
7. Refuse to provide export trade promotion and facilitation services to companies who are not members of GAMA.

Dated: December 14, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92–30710 Filed 12–17–92; 8:45 am]

BILLING CODE 3510–DR–M

Minority Business Development Agency

Business Development Center Applications: U.S. Virgin Islands

AGENCY: Minority Business Development Agency, Commerce (Service Area).

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first Budget period (12 months) is estimated as $169,125 in Federal funds, and a minimum of $29,846 in non-Federal (cost sharing) contribution, from May 1, 1993 to April 30, 1994. Cost-sharing contributions, may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the U.S. Virgin Islands SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&%TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date

quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with QMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Government-wide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Work-place Act of 1988 (Pub. L. 100-690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards. False information on the application can be grounds for denying or terminating funding.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF-LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF-LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for application is *January 20, 1993.* Applications must be postmarked on or before *January 20, 1993.*

The mailing address for submission is:

ADDRESSES: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, rm. 3720, New York, New York 10278, Area Code/Telephone Number: (212) 264-3262.

FOR FURTHER INFORMATION CONTACT: John F. Iglehart, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Inter-governmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 2, 1992.

William R. Fuller,

Deputy Regional Director.

[FR Doc. 92-30744 Filed 12-17-92; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NMFS, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit (P368C).

On August 7, 1992, Notice was published in the **Federal Register** (57 FR 34911) that an application had been filed by Dr. James T. Harvey, Assistant Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039-0450, for a scientific research permit to capture 200 California sea lions (*Zalophus californianus*) and to inadvertently harass up to 300 during capture activities and during efforts to collect fecal samples and regurgitated material.

Notice is hereby given that on December 11, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit and supporting documentation are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213 (310/980-4015).

Dated: December 11, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-30703 Filed 12-17-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, DOC.

ACTION: Notice of correction regarding Application for Scientific Research Permit (P171C).

SUMMARY: This notice revises the second paragraph of a notice previously published in the **Federal Register** on November 20, 1992 (57 FR 54771) as follows:

On page 54771, column 1, the following should be added to the end of the second paragraph: "Individuals of the following species may be approached on an opportunistic basis for observation/photo-identification up to three times each annually over the five-year period: 500 bottlenose dolphins (*Tursiops truncatus*); 500 spotted dolphins (*Stenella attenuata*); 1000 spinner dolphins (*Stenella longirostris*); 200 false killer whales (*Pseudorca crassidens*); and 100 pilot whales (*Globicephala macrorhynchus*)."

Written data or views, or requests for a public hearing on this portion of the application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on a particular application

would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713-2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213 (310/980-4016);

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586-7221); and

Coordinator, Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, room 106, Honolulu, HI 96822-2396 (808/955-8831).

This notice does not affect the comment period for the portion of the application concerning humpback whale research, notification of which was previously published in the **Federal Register** on November 20, 1992 (57 FR 54771).

Dated: December 14, 1992.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-30704 Filed 12-17-92; 8:45 am]

BILLING CODE 3510-22-M a resolution is required from each participating Tribe,

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of experimental fishing permits.

SUMMARY: This notice announces the issuance of experimental fishing permits (EFPs) to shore-based catcher boats to implement a pilot observation program to monitor the bycatch of salmon caught incidental to Pacific whiting trawl operations. The permits authorized the retention of salmonids incidentally caught with mid-water trawl gear, for limited experimental purposes. The permits allowed fishing practices that were otherwise prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations.

EFFECTIVE DATES: The EFPs issued were effective from 0001 hours (local time) April 28, 1992, through 0001 hours (local time) October 31, 1992.

ADDRESSES: Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: The FMP and implementing regulations at 50 CFR part 663 specify that an EFP may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10. An EFP application was received from the States of Washington, Oregon, and California on March 23, 1992, requesting to delay, until offloading, the sorting of salmon caught incidental to the Pacific whiting trawl fishery in the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. Retention of trawl-caught salmon is prohibited by 50 CFR 663.7(b). The purpose of the EFP was to allow the states to monitor the bycatch of salmon caught incidental to Pacific whiting trawl operations on vessels that delivered shoreside. A notice acknowledging the receipt of the application, describing the proposal and requesting public comment, was published in the **Federal Register** (57 FR 11466, April 3, 1992). No written comments were received.

The application was reviewed by the Pacific Fishery Management Council (Council) at its April 7-10, 1992, public meeting. At the Council's recommendation, the Director, Northwest Region, NMFS, approved the application and granted the permits.

Between April and October 1992, 18 EFPs were issued to individual vessels designated by Oregon Department of Fish and Wildlife (ODFW) and Washington Department of Fisheries (WDF) as participants in the pilot observation program. At various times, 18 catcher boats operated in this experimental fishery. Their catch was landed at participating shore-based processing plants in Newport and Astoria, Oregon, and Ilwaco, Washington. Catcher boats landing whiting in California did not express an interest in the experimental fishery, so no EFPs were issued to them.

A number of conditions were imposed on the use of the EFPs. Each permitted vessel was required to carry an observer. The permits were valid only for landings at processing plants designated by the States of Washington and Oregon as participants in the observation program. Designated processing plants agreed to set aside salmonids for biological sampling and disposition by state agency personnel and allow state personnel to sample whiting landings. The permits were valid only for mid-water trawl fishing that targeted whiting. All salmon caught incidentally while fishing for whiting were required to be retained onboard the fishing vessel and offloaded at a designated shoreside processing plant so that the state could examine each fish. Salmon retained under the permit could not be sold. The permit holder agreed to the public release of any and all information obtained as a result of activities conducted under the permit. The results of the experimental fishery were prepared by ODFW and presented at the November 16-20, 1992, Council meeting. A copy of the permits may be obtained from the NMFS Regional Director (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 14, 1992.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-30800 Filed 12-17-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of Bangladesh

December 11, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated February 19 and 24, 1986, as amended and extended, between the

Governments of the United States and the People's Republic of Bangladesh, establishes limits for the period beginning on February 1, 1993 and extending through January 31, 1994.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period February 1, 1993 through January 31, 1994. The limit for Categories 340/640 has been reduced to account for carryforward and special carryforward used. The reduction for special carryforward used is at the rate of 1.2 dozen for every dozen used, as agreed in letters exchanged on October 14 and October 15, 1992, between the Governments of the United States and the People's Republic of Bangladesh.

A copy of the bilateral textile agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1991).

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 agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 11, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated February 19 and 24, 1986, as amended and extended, between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on February 1, 1993 and extending through January 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	325,815 dozen.
331	825,439 dozen pairs.
334	99,399 dozen.
335	178,471 dozen.
336/636	304,170 dozen.
338/339	925,204 dozen.
340/640	1,892,731 dozen.
341	1,732,602 dozen.
342/642	299,767 dozen.
347/348	1,559,340 dozen.
351/651	476,092 dozen.
363	17,745,950 numbers.
369–S [1]	1,189,523 kilograms.
634	347,750 dozen.
635	225,301 dozen.
638/639	1,173,328 dozen.
641	725,489 dozen.
645/646	275,543 dozen.
647/648	980,718 dozen.
847	495,929 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the period February 1, 1993 through January 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–30647 Filed 12–17–92; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 19, 1993.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. It is proposed to add the following commodities to the Procurement List for production by the nonprofit agency listed:

Arming Wire Assembly
1325–00–947–6698
1325–01–155–9965
1325–01–264–5465

Nonprofit Agency: JobWorks, Inc., St. Petersburg, Florida.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–30789 Filed 12–17–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by a nonprofit agency employed persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 19, 1993.

ADDRESS: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 16, 23 and 30, 1992, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (57 FR 47454, 48359 and 49176) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the services, fair market price, and the impact of the additions on the current or most recent contractor, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial, Federal Service Center, 5600 Rickenbacker Road, Bell, California.

Janitorial/Custodial, Naval Facilities Engineering Command, Western Division, Naval and Marine Corps Reserve Center, San Bruno, California.

Mailroom Operation, U.S. Army Corps of Engineers, Los Angeles District, Los Angeles, California.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-30791 Filed 12-17-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 19, 1993.

ADDRESSES: Committee for Purchase From People Who are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and services to the Procurement List for production by the nonprofit agency listed:

Commodity

Deployment Bag, Parachute
1670-01-235-0923
Nonprofit Agency: Huntsville Rehabilitation Foundation, Huntsville, Alabama.

Services

Janitorial/Custodial
Anderson National Historic Site, Rt. 1, Box 85, Andersonville, Georgia.
Nonprofit Agency: Macon County Mental Retardation Service Center, Montezuma, Georgia.

Janitorial/Custodial
Federal Building and U.S. Courthouse, 316 North 26th Street, Billings, Montana.
Nonprofit Agency: Community Options Resource Enterprises, Inc., Billings, Montana.

Janitorial/Custodial
Federal Building and U.S. Courthouse, 301 South Park Avenue, Helena, Montana.
Nonprofit Agency: Helena Industries, Inc., Helena, Montana.

Janitorial/Custodial
U.S. Army Reserve Center, 1001 and 1005 Lakecrest Road, Grand Prairie, Texas.
Nonprofit Agency: Fairweather Associates, Inc., Dallas, Texas.

Janitorial/Custodial
U.S. Army Reserve Center, 200 North New Road, Waco, Texas.
Nonprofit Agency: Heart of Texas Goodwill Industries, Inc., Waco, Texas.

Parts Machining
Naval Aviation Depot, Jacksonville, Florida.
Nonprofit Agency: West Tennessee Lions Blind Industries, Memphis, Tennessee.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-30790 Filed 12-17-92; 8:45 am]

BILLING CODE 6820-33-M

COMPETITIVENESS POLICY COUNCIL

Notice of forthcoming meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the

Competitiveness Policy Council announces several forthcoming meetings.

DATES: January 7 and 8, 1993; 8:30 to 5:30 p.m.

ADDRESS: Eighth Floor Conference Center, 11 Dupont Circle, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Howard Rosen, Executive Director, Competitiveness Policy Council, suite 650, 11 Dupont Circle, NW., Washington, DC 20036, (202) 387-9017.

SUPPLEMENTARY INFORMATION: The Competitiveness Policy Council (CPC) was established by the Competitiveness Policy Council Act, as contained in the Trade and Competitiveness Act of 1988, Public Law 100-418, sections 5201-5210, as amended by the Customs and Trade Act of 1990, Public Law 101-382, section 133. The CPC is composed of 12 members and is to advise the President and Congress on matters concerning competitiveness of the U.S. economy. The Council's chairman, Dr. C. Fred Bergsten, will chair each meeting.

Each meeting will be open to the public subject to the seating capacity of the room. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open.

AGENDA: The Chairman will open each meeting with a report on developments related to the activities of the Council. The work of each of the eight subcouncils will be discussed. The subcouncils include: Capital formation, corporate governance, critical technologies, education, manufacturing, public infrastructure, trade policy, and training. The Council will also consider additional business as suggested by its members.

Dated: December 14, 1992.

Dr. C. Fred Bergsten,

Chairman, Competitiveness Policy Council.

[FR Doc. 92-30748 Filed 12-17-92; 8:45 am]

BILLING CODE 6820-11-M

DEPARTMENT OF DEFENSE

Department of the Army

Office of the Secretary of the Army; Environmental Assessment for Realignment Actions at Fort Jackson, SC

AGENCY: United States Army, Department of Defense.

ACTION: Finding of no significant impact.

SUMMARY: The Department of the Army has prepared an Environmental Assessment (EA) that evaluates the impact of the realignment of the Soldier Support Center (SSC) from Fort Benjamin Harrison, Indiana, to Fort Jackson, South Carolina, in accordance with the Base Closure and Realignment Act of 1990 (Pub. L. 101-510).

The realignment will involve approximately 500 permanent party soldiers, 400 civilian employees, and an average daily student load of 1650. The realignment of the SSC requires construction and/or renovation of over 331,000 square feet of instructional and administrative space, unaccompanied enlisted soldier barracks, additional medical facilities and a child development center.

Alternatives considered in the EA include the No Action Alternative, leasing facilities in the city of Columbia, South Carolina, using existing facilities without renovation, using facilities with renovation, and new construction.

The preferred alternative to meet the requirements of this realignment is as follows:

- Time-phase the movement of personnel over a nine month period.
- Construct Soldier Support War Fighting Center (SSWFC) in the cleared area lying northwest of Lee Road and southwest of Hampton Parkway.
- Construct the Non-Commissioned Officers (NCO) Academy and the Advanced Individual Training (AIT) component of the Adjutant General and Finance School separate from SSWFC.
- Construct the NCO Academy at the site that lies northeast of Bragg and southeast of Jackson streets. Furthermore, the NCO Academy will make full use of buildings 2280 and 3200 without renovation.
- Locate the Field Training Area for the NCO Academy (NCOFTA) at the site that lies south of Sergeant Jasper Road and 320 feet east of Ivy Road. No permanent improvements are needed for this facility.
- Renovate the former cook and baker School (Building 2375) and buildings 2270 and 2210 for use as instructional classroom facilities by the AIT school.
- Collocate the Adjutant General Battle Simulator (AGBS) with the SSWFC.
- Convert buildings 3215, 3235, 3265, 3275, and 3276 to standard-design unaccompanied enlisted personnel housing to provide residence accommodations for new personnel.
- Construct a new 60-child Child Development Center (CDC) at the currently unimproved site that lies along Scales Avenue across from the existing CDC.
- Construct the addition to the Moncrief Memorial Hospital at the site adjacent to the southwest corner of the existing facility.

The proposed alternatives were evaluated for expected impacts to air quality, water resources, geology, landfills, traffic, energy, hazardous and medical wastes, plant and animal ecology, threatened and endangered species, wetlands, cultural resources, socioeconomic environment, and quality of life. The EA did not identify any significant adverse impacts to any of these environmental factors.

The EA identifies the following mitigation actions that will be implemented to provide sound stewardship of Fort Jackson's environment: Increase existing on-base law enforcement staff; continue to develop Fort Jackson's Integrated Natural Resource Management Plan; review and update all hazardous waste disposal contracts; and exercise appropriate erosion and air emissions control measures. The proposed action is environmentally sound and sufficient data are available to determine the proposed realignment will not have a significant environmental effect. Therefore, an Environmental Impact Statement (EIS) will not be prepared.

DATES: Comments must be received on or before January 19, 1993.

ADDRESSES: The EA is available for public review at the office of the Directorate of Engineering and Housing and the Fort Jackson Library, Fort Jackson, South Carolina, and the Richland County Library at Sumter Street, Columbia, South Carolina. A copy of the EA can be obtained by contacting Mr. J. B. Knight of the Environmental and Natural Resources Division at Fort Jackson at (803) 751-5011.

FOR FURTHER INFORMATION: Send all comments to: Dr. Bradley Foster, U.S. Army Corps of Engineers, Savannah District, 100 W. Oglethorpe Ave., Savannah, Georgia 31401, or call 912-652-5833.

Dated: December 14, 1992.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, Environment, Safety, & Occupational Health, OASA (IL&E).

[FR Doc. 92-30688 Filed 12-17-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Amendment to teleconference meeting notice for December 18, 1992.

SUMMARY: Notice is hereby given of an amendment to the notice of a teleconference meeting of the Executive Committee of the National Assessment Governing Board published in the **Federal Register** on Thursday, December 3, 1992 in Vol. 57, No. 233, page 57161. Due to the expedited action required as the result of the early resignation of the incumbent Board member in the category of Governor or former Governor (Republican), the Executive Committee will meet in partially closed session to review the Nominations Committee recommendations of nominees to fill this vacancy. The Executive Committee will formulate recommendations for the full Board to take a final action on the nominees. The meeting will be closed to the public from 11 a.m. to 11:30 a.m. to permit the Committee to discuss the qualifications of nominees for appointment to the National Assessment Governing Board. The review and subsequent discussion of the nominees' qualifications relates solely to the internal rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of title 5 U.S.C.

A summary of the activities at the closed portion of the meeting and related matters, which are informative to the public consistent with the policy of 5 U.S.C., 552b, will be available to the public within fourteen days after the meeting.

Dated: December 15, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92-30745 Filed 12-17-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for a Proposed Pipeline and Outfall Structure, Weldon Spring Site Remedial Action Project, MO

AGENCY: Department of Energy.

ACTION: Floodplain Statement of Findings for Proposed Pipeline and Outfall Structure.

SUMMARY: Regulations at 10 CFR part 1022 require the Department of Energy (DOE) to evaluate actions it may take in a floodplain/wetlands in order to ensure consideration of protection of the floodplain/wetlands in decision making. In accordance with these regulations, DOE published in the **Federal Register** on September 15, 1992 (57 FR 42564), a notice of floodplain/wetlands involvement for the proposed construction of buried pipeline through wetland areas and a submerged outfall structure in the Missouri River floodplain. The public comment period for this notice ended September 30, 1992, and no comments were received. A Floodplain/Wetlands Assessment for this action was prepared in which DOE described the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. This Statement of Findings addresses the action in the floodplain only, as required by 10 CFR 1022.15(b). DOE will endeavor to allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Stephen McCracken, Project Manager, Weldon Spring Site Remedial Action Project (WSSRAP), U.S. Department of Energy, 7295 Highway 94 South, St. Charles, Missouri 63303, (314) 441-8978. For further information on general DOE Floodplain/Wetlands Environmental Review Requirements, contact Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy,1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756. DOE can provide information and maps showing the route of the proposed pipeline and 1984 FEMA Floodplain and Floodway maps showing the floodplain.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for a proposed pipeline and outfall structure in the Missouri River near WSSRAP prepared in accordance with 10 CFR part 1022. A Notice of Floodplain/Wetlands Involvement was published in the **Federal Register** on September 15, 1992 (57 FR 42564) and a Floodplain/Wetlands Assessment was prepared. DOE is conducting response actions at the chemical plant area of the Weldon Spring Site under its Environmental Restoration and Waste Management Program. The site is located in St. Charles County, Missouri, approximately 30 miles west of St. Louis. The site became contaminated as a result of processing and disposal activities that took place from the 1940s to the 1960s. The chemical plant area of the site has been inactive since 1967 and was placed on the National Priorities List of the U.S. Environmental Protection Agency in 1989.

Cleanup of the Weldon Spring Site consists of several actions, one of which involves the treatment and discharge of approximately 57 million gallons of radioactive and chemically contaminated water currently impounded at the site. After the water is treated in a newly-constructed on-site treatment plant, it would be discharged to a buried pipeline constructed from the site to the Missouri River. Site water will be treated in the general range of drinking water quality as identified in the National Pollutant Discharge Elimination System permit for this action.

A small section of the pipeline and its outfall structure would be located in the 100-year floodplain of the Missouri River. The floodplain in this location is that area with an elevation less than 474 feet above mean sea level, as identified by the St. Charles County Planning and Zoning Department (1984 FEMA Floodplain and Floodway Maps) in accordance with the authority delegated by the Federal Emergency Management Agency (FEMA) District 7 to manage floodplains in St. Charles County.

Other discharge options were evaluated in an engineering evaluation/cost analysis (EE/CA) report which was prepared in July 1990 for the water treatment action (DOE/OR/21548-106). Further options were evaluated in a value engineering study that was conducted subsequent to a drainage flow study as part of detailed design activities for the water treatment action. Five alternate pipeline routes and two alternatives for outfall structures were evaluated in this detailed engineering study, each of which would have resulted in greater environmental impacts. Some of the alternatives were routed through environmentally sensitive resources, such as the preferred habitat area for the Cooper's Hawk and archaeological sites. The proposed route and the location of the outfall structure in the floodplain were selected because they are restricted to areas that have previously been disturbed for roads and railroads, so that the short-term incremental disturbance would be minimal.

The alternative identified in the EE/CA for the water treatment action was to discharge the treated water to a natural drainage channel, referred to as the Southeast Drainage channel. This alternative would result in minimal disturbance, but it might result in the resuspension and/or dissolution of contaminants from sediment present in the drainage as a result of past discharges and ongoing surface runoff from the site. To address this possibility, the pipeline has been

proposed as an alternate discharge option. This pipeline would follow a route of previous disturbance within the floodplain to minimize potential environmental impacts.

The treatment of contaminated water from the chemical plant area and discharge of the treated water would limit potential exposures at, and migration from, the contaminated on-site impoundments and would promote short-term and long-term protection of human health and the environment relative to the contaminated surface water.

This construction would conform to applicable State and local floodplain protection standards. This action would not require a floodplain development permit from the St. Charles County Planning and Zoning Department because the action does not involve construction of, and furnishing electricity to, an above-ground building.

Good engineering practices, such as straw bales and/or other sediment control devices, would be used during construction. Seeding would be used to maintain the pipeline and outfall structure after construction. The level of activity in the floodplain for this action would be extremely minimal. Therefore, any impacts to the floodplain would be negligible.

DOE will endeavor to allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92-30775 Filed 12-17-92; 8:45 am]

BILLING CODE 6450-01-M

Bartlesville Project Office, Fluvial-Dominated Deltaic Reservoirs in the Southern Midcontinent

AGENCY: Bartlesville Project Office, Department of Energy.

ACTION: Notice of determination of Noncompetitive financial assistance.

SUMMARY: The Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (B) and (D), it intends to make a Noncompetitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center to the Oklahoma Geological Survey to organize and conduct a workshop which will include both formal and informal presentations on "Fluvial-Dominated Deltaic Reservoirs in the Southern Midcontinent."

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Ms. Donna J. Lebetz, P.O. Box 10940, MS921-118, Pittsburgh, PA 15236-0940. Telephone: (412) 892-6266.

SUPPLEMENTARY INFORMATION: .

Grant No.

DE-FG22-93PC14876

Term of Assistance/Estimated Cost

The term of the grant is for a twelve-month period at an estimated value of $22,500. DOE's funding share will be $9,500.

Scope

Based upon the authority of 10 CFR 600.7(b)(2)(i) criteria (B) and (D), the objective of this Grant (DE-FG22-93BC14876) is to permit the DOE/BPO and the Oklahoma Geological Survey to participate in funding a workshop to enhance science and technology transfer through discussions and reports dealing with the geologic setting, depositional environments, and digenetic history of fluvial-dominated deltaic reservoirs, as well as reservoir characterization and the engineering factors that influence hydrocarbon accumulation or hydrocarbon production. The Workshop will focus on deltaic reservoirs in fluvial-dominated environments of the southern Midcontinent, including Oklahoma and contiguous parts of Kansas, Missouri, Arkansas, Texas, New Mexico, and Colorado. The presentations will address a means of technology transfer in order to provide a new source of information for oil and gas producers and does meet the *National Energy Strategy* goal of arresting the U.S. vulnerability to oil supply disruptions by increasing the domestic crude oil resource base.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 92-30767 Filed 12-17-92; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Intent to Revise Transmission Rates to Become Effective October 1, 1993; Request for Comments

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent and request for comments. BPA File No.: TR-93. BPA requests that all comments and documents to become part of the official record compiled in the process of adjusting transmission rates contain the file number designation TR-93.

SUMMARY: BPA is developing transmission rates proposed to become effective October 1, 1993. At this time, BPA announces its intent to revise its rates and seeks comments that BPA can use to develop its proposal. BPA expects to publish a notice of the proposed rates in the **Federal Register** in January 1993.

The January notice will also announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). A final schedule will be established by the Hearing Officer who presides over BPA's rate hearings. These hearings, and informal field hearings, will give interested persons an opportunity to present oral and written comments on the rate proposal.

DATES: Comments concerning the development of proposed transmission rates will be accepted through 4 p.m., January 15, 1993. Pursuant to the ex parte limitations contained in BPA's general rate proceeding procedures, BPA will not accept oral recommendations on substantive issues except in meetings for which notice has been given. 51 FR 7611 (March 5, 1986).

Responsible Official: Mr. Sydney Berwager, Director, Division of Contracts and Rates, is the official responsible for the development of BPA's rates.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Shirley Price, Public Involvement Office, at the address listed above, 503-230-4366, or toll free 1-800-622-4519. Information may also be obtained from:

Mr. George Bell, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 Northeast Irving Street, Portland, Oregon 97232, 503-230-4552.

Mr. Robert N. Laffel, Eugene District Manager, Room 206, Federal Building, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-465-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, U.S. Courthouse, 920 West Riverside Avenue, Spokane, Washington 99201, 509-353-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Ms. Carol Fleischman, Spokane District Manager, Room 112, U.S. Courthouse, 920 West Riverside, Spokane, Washington 99201, 509-353-3279.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98807–0741, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C19030, Suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109, 206–553–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6226.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706

Mr. James Normandeau, Boise District Manager, Room 540, 304 North 8th Street, Boise, Idaho 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION: The Federal Columbia River Transmission System (FCRTS) is owned and operated by BPA, a Federal power marketing agency within the Department of Energy. The FCRTS encompasses approximately 80 percent of the capacity of the high-voltage electric transmission system within the Pacific Northwest. Electric power from Federal and non-Federal generating units is integrated and transmitted utilizing the FCRTS. Interregional transmission services to customers outside the Pacific Northwest are also provided by BPA.

Current rates apply to four types of transmission service: (1) Firm integration of utilities' remote resources; (2) firm interregional transactions; (3) nonfirm transactions between systems both within the outside the Pacific Northwest region; and (4) firm transmission over specified facilities. Firm transmission is sold generally pursuant to contracts for periods up to 20 years. Firm transmission on BPA's network (main grid) is available on a mileage basis as well as a postage stamp rate structure.

BPA develops a Revenue Requirement Study that projects BPA's total costs of providing services to BPA's customers, including repayment of the Federal investment in the Federal Columbia River Power system. The revenue requirement calculation will be a major factor in determining the overall level of BPA's proposed power and transmission rates.

BPA has just completed a public process for culminating in decisions on budget program levels for FY's 1994 and 1995. Accordingly, program level decisions will not be an issue in the rate case. Another focus of this public process was the development of BPA's financial goals. Consistent with BPA's pledge at the end of the 1991 rate case, implementation of the 10-Year Financial Plan will be addressed in this rate case. The Revenue Requirement Study will incorporate BPA's program levels and implement BPA's financial goals.

In developing the 1993 transmission rate proposal, BPA plans to revise the level and charges of some of the existing transmission rate schedules and possibly revise the General Transmission Rate Schedule Provisions. However, BPA anticipates that the general application and availability of these rate schedules will remain unchanged. BPA also plans to propose a new rate schedule to recover annual costs associated with possible non-Federal ownership rights on the Pacific Northwest AC Intertie.

In order to be considered in the development of BPA's initial proposal, comments must be in writing and be submitted no later than 4 p.m., January 15, 1993. Oral communications should be for the purpose of requesting either status reports or procedural information. Following publication of the initial proposal in the **Federal Register** (on or about January 20, 1993), formal public hearings will be, and general public field hearings may be, conducted by BPA. Written comments from individuals or entities other than parties to BPA's formal rate case will also be accepted through March 15, 1993. After completion of an environmental process pursuant to the National Environmental Policy Act and following the hearings, BPA will announce its final proposed transmission rates and submit them by August 2, 1993, to the Federal Energy Regulatory Commission for approval.

Issued in Portland, Oregon, on December 4, 1992.

Steven G. Hickok,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 92–30766 Filed 12–17–92; 8:45 am]

BILLING CODE 6450–01–M

Intent To Revise Wholesale Power Rates To Become Effective October 1, 1993; Request for Comments

AGENCY: Bonneville Power Administration, (BPA), DOE.

ACTION: Notice of Intent and Request for Comments. BPA File No.: WP–93. BPA requests that all comments and documents to become part of the Official Record compiled in the process of adjusting wholesale power rates contain the file number designation WP–93.

SUMMARY: BPA is developing adjusted wholesale power rates proposed to become effective October 1, 1993. At this time, BPA announces its intent to revise its rates and seeks comments that BPA can use to develop its proposals. BPA expects to publish a notice of the proposed rates in the **Federal Register** in January 1993.

The January notice will also announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). A final schedule will be established by the Hearing Officer who presides over BPA's rate hearings. These hearings, and informal field hearings, will give interested persons an opportunity to present oral and written comments on the proposal.

DATES: Comments concerning the development of proposed wholesale power rates will be accepted through 4 p.m., January 15, 1993. Pursuant to the ex parte limitations contained in BPA's general rate proceeding procedures, BPA will not accept oral recommendations on substantive issues except in meetings for which notice has been given. 51 FR 7611 (March 5, 1986).

Responsible Official: Mr. Sydney Berwager, Director, Division of Contracts and Rates, is the official responsible for the development of BPA's rates.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Price, Public Involvement Office, at the address listed above, 503–230–4366, or call 1–800–622–4519. Information may also be obtained from:

Mr. George Bell, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 Northeast Irving Street, Portland, Oregon 97232, 503–230–4552.

Mr. Robert N. Laffel, Eugene District Manager, Room 206, Federal Building, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–465–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, U.S. Courthouse, 920 West Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Ms. Carol Fleischman, Spokane District Manager, Room 112, U.S. Courthouse, 920 West Riverside, Spokane, Washington 99201, 509–353–3279.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301

Yakima Street, Wenatchee, Washington 98807–0741, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C19030, Suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109, 206–553–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla, Walla, Washington 99362, 509–522–6226.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. James Normandeau, Boise District Manager, Room 450, 304 North 8th Street, Boise, Idaho 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

BPA is a Federal power marketing agency in the Pacific Northwest. BPA markets hydroelectric power from 30 dams, including projects operated by the U.S. Army Corps of Engineers and U.S. Bureau of Reclamation on the Columbia River and its tributaries, and projects owned by the City of Idaho Falls and the Washington Public Power Supply System (Supply System). BPA also markets thermal power BPA acquires from interests in the region. In addition, BPA owns, operates, and maintains the nation's largest high-voltage transmission system grid.

BPA supplies about 45 percent of the electric energy consumed in the Pacific Northwest and maintains about 80 percent of the region's high-voltage transmission capacity. BPA sells power to 174 customers, including publicly, cooperatively, and privately owned utilities; Federal and State agencies; and direct-service industries (DSIs). The power is sold wholesale to BPA utility customers for resale to consumers and is sold directly to BPA's industrial and Federal agency customers. In addition, BPA sells power that is surplus to the needs of the Pacific Northwest to customers within and outside the region.

The rates that BPA charges its customers must produce revenues that are sufficient to repay, with interest, the Federal investment in generation, conservation, and transmission facilities. Revenues must also pay BPA's operation and maintenance expenses, purchased power costs, and other miscellaneous expenses. BPA also sets rates to recover a certain amount of positive net revenues. These planned net revenues, combined with BPA's existing financial reserves, will provide current rate period risk mitigation protection to help assure BPA's ability to recover its costs, including its annual payments to the U.S. Treasury.

BPA's current wholesale power rates became effective on October 1, 1991.

BPA is preparing studies to determine the extent to which projected revenue requirements for FY's 1994 and 1995 will exceed revenues projected under current rates. BPA will then prepare studies to establish proposed rates for the FY 1994 and 1995 period. BPA will also assess the potential environmental effects of the proposed rates.

II. Major Issues

The development of BPA's rates is complex, raising numerous issues for resolution in the hearings process. The following is a brief explanation of several major issues that are expected to be addressed in the hearing. Some of these issues have been the subject of much discussion in previous BPA rate cases.

A. Revenue Requirement

BPA develops a Revenue Requirement Study that projects BPA's total costs of providing services to BPA's customers, including repayment of the Federal investment in the Federal Columbia River Power System. The revenue requirement calculation will be a major factor in determining the overall level of BPA's power and transmission proposed rates.

BPA has just completed a public process for culminating in decisions on budget program levels for FY's 1994 and 1995. Accordingly, program level decisions will not be an issue in the rate case. Another focus of this public process was the development of BPA's financial goals. Consistent with BPA's pledge at the end of the 1991 rate case, implementation of the 10-Year Financial Plan will be addressed in this rate case. The Revenue Requirement Study will incorporate BPA's program levels and implement BPA's financial goals.

B. Revenue Forecast and Risk Analysis

The Revenue Forecast projects BPA's expected level of sales and revenue for the rate period. The Risk Analysis reviews the risks associated with the major elements of the forecast. The probabilities given to the various risk factors influence the need to adjust rates.

Projected revenues from nonfirm energy sales are credited during ratemaking against costs allocated to rates of firm power classes. Forecasts of nonfirm sales play a key role in determining the level of rate adjustments and have a large impact on BPA's ability to make its projected payments to the Treasury.

C. Loads and Resources Determinations

The energy and capacity loads and resources forecasted by BPA to occur during the forthcoming rate period determine BPA's forecasted power sales. Forecasted sales and revenue requirements determine the level of rates that must be charged to generate sufficient revenue.

D. Allocation of Costs

The rates charged each customer class reflect the classification of costs between capacity and energy and the allocation of costs to that particular customer class. Given the change in BPA's load and resource position from surplus to load/resource balance, BPA is projecting some resource acquisitions, the costs of which must be allocated to customer classes. BPA's initial rate proposal will present BPA's proposed cost classification and allocation methodologies and results. To the extent possible, the methodologies employed will be the same as were used in BPA's initial proposal in the 1991 rate case.

E. 7(b)(2) Rate Test Study

In accordance with section 7(b)(2) of the Northwest Power Act, BPA must conduct a test to determine whether it is necessary to provide rate protection for BPA's public body and cooperative customers and, if so, the amount of the protection. Since the section 7(b)(2) rate test may reallocate costs to other customers, the rate test and the assumptions used to perform the test are expected to be an issue in the rate case.

In order to be considered in the development of BPA's initial proposal, comments must be in writing and be submitted no later than 4 p.m, January 15, 1993. Oral communications should be for the purpose of requesting either status reports or procedural information. Following publication of the initial proposal in the **Federal Register** (on or about January 20, 1993), formal public hearings beginning on or about January 28, 1993, will be, and general public field hearings may be, conducted by BPA. Written comments from individuals or entities other than parties to BPA's formal rate case will also be accepted through March 15, 1993. After completion of an environmental process pursuant to the National Environmental Policy Act and following the hearings, BPA will announce its final proposed wholesale power rates and submit them on August 2, 1993, to the Federal Energy Regulatory Commission for approval.

Issued in Portland, Oregon, on December 4, 1992.

Steven G. Hickok,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 92-30765 Filed 12-17-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF93-15-000]

Central Florida Power, L.P.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 11, 1992.

On November 3, 1992, Central Florida Power, L.P. (Applicant), c/o Destec Energy, Inc., of 2500 CityWest Blvd., Suite 150, Houston, Texas, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Polk County, Florida, and will consist of a combustion turbine generator, an unfired heat recovery boiler and an extraction/condensing steam turbine generator (STG). Steam recovered from the STG will be used by Fort Meade Chemical Products (FMCP), an unaffiliated fertilizer manufacturing entity, primarily in manufacturing of concentrated phosphoric acid. Applicant states that, should FMCP's plant cease to produce fertilizer, FMCP will continue to purchase steam from the facility to evaporate the runoff water from the gypsum pile, a byproduct of the fertilizer production, in order to avoid any discharge of the acidic runoff water into the surrounding ground water. Applicant states that when the fertilizer plant is in operation the runoff water is used for the production of fertilizer. The net electric power production capacity of the facility will be approximately 206 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence in the first quarter of 1993.

On December 10, 1992, Applicant tendered for filing an amendment to its filing in this docket. The amendment provides additional information pertaining to the ownership structure and clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status 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 must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the Applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30684 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 1267-000, et al.]

Applications; Hydroelectric Applications (Greenwood County & Duke Power Co., et al.)

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* New License.

b. *Project No.:* 1267-000.

c. *Date Filed:* February 3, 1982.

d. *Applicant:* Greenwood County and Duke Power Company.

e. *Name of Project:* Buzzards Roost Project.

f. *Location:* On Saluda River, Greenwood, Laurens, and Newberry Counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Albert V. Carr, Jr., Associate General Counsel, Duke Power Company, 422 South Church Street, Charlotte, NC 28242, (704) 382-8129.

i. *FERC Contact:* Michael Dees (202) 219-2807.

j. *Deadline Date:* Initial Comments Due January 19, 1993; Reply Comments Due March 2, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The existing project consists of: a reservoir with a surface area of 11,400 acres and an impoundment of approximately 254,000 acre-feet; (1) a 67-foot-high and 2,400-foot-long earthfill dam with a crest elevation of 457.0 feet msl; (3) an 11-foot-high and 200-foot-long fuse plug dike; (4) a spillway structure containing four 250-foot-high and 38-foot-long Taintor gates; (5) a reinforced concrete powerhouse, integral with the spillway structure containing three generating units with a total rated capacity of 15,000 kW; (6) a trailrace; and (7) appurtenant facilities. The project generates an average of 48,557,000 kWh annually. The project is owned by Greenwood County and operated by Duke Power Company under a lease agreement approved by the Commission on June 29, 1966.

m. *Purpose of Project:* The purpose of the project is to generate electric energy to meet Duke Power Company's system load.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Duke Power Company, 422 South Church Street, Charlotte, NC, 28242, (704) 382-8129.

2 a. *Type of Application:* New License.

b. *Project No.:* 2288-004.

c. *Date Filed:* December 26, 1991.

d. *Applicant:* Public Service Company of New Hampshire.

e. *Name of Project:* Gorham.

f. *Location:* On the Androscoggin River near Berlin in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. James J. Kearns, 1000 Elm Street, P.O. Box 330, Manchester, NH 03105.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219-2814.

j. *Comment Date:* Initial Comments Due January 19, 1993; Reply Comments Due March 2, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed consists of the following: (1) a 20-foot-high timber crib dam; (2) an impoundment having a surface area of 32 acres, a gross storage capacity of 120 acre-feet with no usable storage capacity and a normal water surface elevation of

773.53 feet USGS; (3) a 415-foot-long earthen power canal; (4) a powerhouse containing four generating units with a total rated capacity of 2,150 kW; and, (5) appurtenant facilities. The applicant estimates the average annual energy generation of 13,800 MWh.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. The license will expire on December 31, 1993.

m. *Purpose of Project:* The project energy generated is produced for sales to the applicant's electric customers.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at 1000 Elm Street, Manchester, NH 03105 or by calling (603) 634–2799.

3 a. *Type of Application:* New Major License.

b. *Project No.:* 2300–002.

c. *Date Filed:* December 17, 1991.

d. *Applicant:* James River-New Hampshire Electric, Inc.

e. *Name of Project:* Shelburne.

f. *Location:* On the Androscoggin River near Berlin in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. George W. Hill, 650 Main Street, Berlin, NH 03570–2489, (603) 752–4600.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* Initial Comments Due January 19, 1993; Reply Comments Due March 2, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The Shelburne Project's principal features consist of a dam, an integral powerhouse, an impoundment, and appurtenant facilities. For the existing condition, the project has a total nameplate generator capacity of 3.72 MW and an average annual generation of about 18,000 MWh. The applicant is proposing to raise the impoundment level by increasing the flashboards' height by 1.76 feet. Due to this proposals, the average annual generation would increase to 20,000 MWh. In detail, the existing and proposed project is described as follows:

(1) A 551-foot-long concrete gravity dam; (2) an existing impoundment having a surface area of 210 acres, having a negligible useable storage capacity and a normal pool headwater elevation of 733.6 feet msl; (3) a proposed impoundment having a surface area of 250 acres, a negligible useable storage capacity and a normal pool headwater elevation of 735.3 feet msl; (4) a powerhouse containing three generating units with a total rated capacity of 3,720 kW; and, (5) appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to generate electric power for use in the applicant's pulp and paper mills.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy if also available for inspection and reproduction at James River-Hampshire Electric, Inc., 50 Main Street, Berlin, NH 03570–2489, or calling (603) 752–4600.

4 a. *Type of Application:* New Major License.

b. *Project No.:* 2306–008.

c. *Date Filed:* December 23, 1991.

d. *Applicant:* Citizens Utilities Company.

e. *Name of Project:* Clyde River.

f. *Location:* On the Clyde River near Newport in Orleans County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas C. Anderson, High Ridge Park, Stamford, CT 06905–0390, (802) 334–6538.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* January 28, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The licensed project consists of three existing hydroelectric generating facilities, West Charleston, Newport Dam, and Newport No. 11, on the Clyde River and two existing storage reservoirs, Seymour Lake and Echo Pond, on a tributary to the Clyde River.

Seymour Lake is a natural lake with a man-made 43-foot-long rock-filled timber crib dam outlet structure. It has a surface area of 1,750 acres, a useable storage capacity of 2,040 acre-feet and a normal water surface elevation of 1,279 feet USGS. Presently, Seymour Lake provides annual storage for the Clyde River Project but the proposed mode of operation is spillway crest controlled instantaneous run-of-river.

Echo Pond is a natural lake having a surface area of 530 acres, a useable storage capacity of 3,180 acre-feet and a normal water surface elevation of 1,249 feet USGS. Presently Echo provides annual storage for the Clyde River Project but the proposed mode of operation is spillway crest controlled instantaneous run-of-river.

West Charleston consists of: (1) a 197-foot-long rock-fill and masonry dam; (2) a reservoir named Lubber Lake having a surface area of 40 acres, a storage capacity of 220 acre-feet, and a normal water surface elevation of 1,059 feet USGS; (3) a 1,622-foot-long, 6-foot-diameter steel penstock; and, (4) a powerhouse containing one generating united with a rated capacity of 800 kW.

Newport Dam consists of: (1) a 714-foot-long concrete and masonry dam; (2) a reservoir named Clyde Pond having a surface area of 200 acres, a storage capacity of 2,400 acre-feet, and a normal water surface elevation of 879.25 feet USGS; (3) a 50-foot-long, 6-foot-diameter steel penstock which bifurcates into a 6-foot-diameter, 2,175-foot-long penstock and a 5-foot-diameter, 1,800-foot-long penstock leading to a 6-foot-diameter surge tank; (4) a 4.5-foot-diameter intake pipe leads to the powerhouse; and, (5) a powerhouse containing three generating units with a total rated capacity of 4,000 kW.

Newport No. 11 consists of: (1) a 114-foot-long concrete gravity dam; (2) a reservoir having a surface area of 1 acre, a storage capacity of 3.5 acre-feet, and a normal water surface elevation of 740.67 feet USGS; (3) an 80-foot-long, 10-foot-diameter steel penstock; and, (4) a powerhouse containing one generating unit with a rated capacity of 1,800 kW.

The applicant is proposing to operate the project in a run-of-river mode. The average annual net energy generation is 25,437 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Citizens Utilities Company, High Ridge Park, Stamford, CT 06905–0390, or by calling (802) 334–6538.

5 a. *Type of Application:* New Major License.

b. *Project No.:* 2311–001.

c. *Date Filed:* December 23, 1991.

d. *Applicant:* James River-New Hampshire Electric, Inc.

e. *Name of Project:* Gorham.

f. *Location:* On the Androscoggin River near Berlin in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. George W. Hill, 650 Main Street, Berlin, NH 03570–2489, (603) 752–4600.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* Initial Comments Due January 19, 1993; Reply Comments Due March 2, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The Gorham Project's principal features consist of a dam, an impoundment, a power canal, a powerhouse, and appurtenant facilities. For the existing condition, the project has a total capacity of 4.8 MW and an average annual generation of 29,100 MWh. The applicant is proposing to replace two existing generating exciters with a new 1.3 MW capacity unit. The average annual generation would then increase to 33,500 MWh. The existing and proposed project is described as follows:

(1) A 775-foot-long earthen dam; (2) an impoundment having a surface area of 45 acres, a gross storage capacity of 370 acre-feet but a negligible useable storage capacity, and a normal pool headwater elevation of 813.3 feet msl; (3) a 3,350-foot-long, 100-foot-wide power canal; (4) a powerhouse containing four existing and one proposed generating units with a proposed total rated capacity of 6.1 MW; and, (5) appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to generate electric power for use in the applicant's pulp and paper mills.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104 Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at James River-New Hampshire Electric, Inc., 50 Main Street, Berlin, NH 03570–2489, or by calling (603) 752–4600.

6 a. *Type of Application:* Subsequent License.

b. *Project No.:* 2366–001 & 2367–001.

c. *Date Filed:* June 27, 1991.

d. *Applicant:* Maine Public Service Company.

e. *Name of Project:* Aroostook River Hydro Project.

f. *Location:* On the Aroostook River and Millinocket Stream, in Piscataquis and Aroostook Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. Calvin D. Deschene, Manager, Maine Public Service Company, 209 State Street, P.O. Box 1209, Presque Isle, ME 04769–1209, (207) 768–5811.

i. *FERC Contact.* Ed Lee (202) 219–2809.

j. *Deadline Date:* Initial Comments Due January 29, 1993; Reply Comments Due March 15, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D5.

l. *Description of Project:* The project as licensed consists of the following: The existing project will utilize the Millinocket storage dam and reservoir licensed under Project No. 2366 and the Caribou dam licensed under Project No. 2367. The project consists of (1) a 451-foot-long rock-filled, concrete capped, timber-crib spillway with a maximum section height in excess of 40 feet and a permanent crest elevation of 390.0 feet msl with 12-foot-high wooden flashboards; (2) a 73-foot-long by 50-foot-wide forebay with an average depth of 13 feet located on the west bank; (3) a 16-foot-wide by 80-foot-long concrete pool-type fishway situated on the west abutment between the spillway and the existing powerhouse; (4) a 51-foot-long by 34-foot-wide powerhouse containing two identical vertical, fixed-blade propeller turbines with a total nameplate capacity of 800 kilowatts; (5) a 2,400 Volt bus located in the powerhouse; (6) 5 kV, 3/0 copper cable, which is encased in an underground conduit to a 3,000 kVA transformer; (7) 4 transmission lines constructed of 2.0 F copper weld; and (8) appurtenances.

There are no lands of the United States affected by the project. The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation would be 7,138 MWh and owns all existing project facilities.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: D5.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Maine Public Service Company, 209 State Street, P.O. Box 1209, Presque Isle, ME.

7. a. *Type of Application:* Non Project Use of Project Lands.

b. *Project No.:* 2370–043.

c. *Date Filed:* September 4, 1992.

d. *Applicant:* Pennsylvania Electric Company.

e. *Name of Project:* Deep Creek Lake.

f. *Location:* Deep Creek in Garrett County, Maryland.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* T. N. Atherton, Esq., Pennsylvania Electric Company, 1001 Broad Street, Johnstown, PA 15907.

i. *FERC Contact:* John Costello, (202) 219–2914.

j. *Comment Date:* January 19, 1993.

k. *Description of Project:* The Pennsylvania Electric Company, licensee for the Deep Creek Lake Project, requests the Commission's authorization to permit Echo Marina, Inc. (the developer for the Echo Marina at Deep Creek Lake) to relocate its marina facilities. Echo Marina proposes to relocate its rental boat operations from its present site in North Glade Cove, an area which is zoned "residential" to a location zoned "town center". The new site, located along Glendale Road, includes a mix of commercial and residential development, as well as undeveloped land. Echo Marina's

proposal does not significantly affect the amount of buffer strip land or remove land from the project boundary (a copy of the application may be obtained by interested parties directly from the licensee).

1. This notice also consists of the following standard paragraphs: B, C, and D2.

8. a. *Type of Application:* New License.

b. *Project No.:* 2373–001.

c. *Dated filed:* December 23, 1991.

d. *Applicant:* South Berloit Water, Gas and Electric Company.

e. *Name of Project:* Rockton.

f. *Location:* On the Rock River, at the town of Rockton, in Winnebago County, Illinois.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Norman E. Boys, Wisconsin Power and Light Company, P.O. Box 192, 222 West Washington Avenue, Madison, WI 53701–0192, (608) 252–3086.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Deadline:* January 19, 1993; reply comments March 2, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D6.

l. *Description of Project:* The project would consist of: (1) A 6-foot-high concrete overflow dam (2) a 23-foot-high earth dike abutting the upstream end of the dam; (3) a reservoir with a surface area of 155 acres; (4 headworks consisting of five 10-foot-high tainter gates; (5) a 5000-foot-long power canal; (6) a powerhouse containing two generating units with a combined installed capacity of 1,100 kW and an average annual generation of 5,705,333 kWh; and (7) appurtenant facilities.

The licensee is not proposing any changes to the existing project works.

m. *Purpose of Project:* All project energy generated would be utilized by the licensee.

n. This notice also consists of the following standard paragraphs: B1, and D6.

9 a. *Type of Application*: New Major License (Less than 5 MW).

b. *Project No.*: 2532–005.

c. *Date filed:* November 25, 1991.

d. *Applicant*: Minnesota Power & Light Company.

e. *Name of Project*: Little Falls Hydroelectric Project.

f. *Location*: On the Mississippi River in Morrison County, Minnesota.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Stephen A. Kopish, Hydro Operations Manager, Minnesota Power & Light Company, 30 West Superior Street, Duluth, Minnesota 55802, (218) 722–2641.

i. *FERC Contact*: Mr. Michael Strezelecki, (202) 219–2827.

j. *Comment Date*: January 19, 1993; reply comments March 2, 1993.

k. *Status of Environmental Analysis*: This application is ready for environmental analysis at this time—see attached paragraph D6.

l. *Description of Project*: The run-of-river project consists of: (1) A 30-foot-high, 900-foot-long concrete dam; (2) a 576-acre impoundment with a normal pool evaluation of 1,107 feet; (3) two powerhouses, one containing four generating units with a total installed capacity of 3,920 MW, and one containing two generating units with a total installed capacity of 800 MW; and (4) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation from this project to be 26,117 MWh.

m. *Purpose of Project*: All project energy generated would be put into the applicant's electrical grid and distributed to its customers.

n. This notice also consists of the following standard paragraphs: B1 and D6.

o. *Available Locations of Application*: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Minnesota Power & Light Company, located at 30 West Superior Street, Duluth, Minnesota 55802, or by calling Mr. Stephen A. Kopish at (218) 722–2641.

10 a. *Type of Application:* New License.

b. *Project No.*: 2582–002.

c. *Date Filed:* December 27, 1991.

d. *Applicant:* Rochester Gas and Electric Corporation.

e. *Name of Project:* Station 2 Project.

f. *Location:* On the Genesee River, Monroe County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David K. Fingado, Rochester Gas & Electric Corp., 89 East Avenue, Rochester, NY 14649–0001, (716) 724–8108.

i. *FERC Contact:* Robert Bell (202) 219–2806.

j. *Deadline Date:* January 29, 1993; reply comments March 9, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D5.

l. *Description of Project:* The existing Station No. 2 Project's principal features consist of a dam structure, a power canal, an intake house, a penstock, a powerhouse, an impoundment, a transmission line, and appurtenant facilities. The existing project has a total nameplate generator capacity of 6.5 megawatts (MW) (minimum and maximum net output capacity of 2.5 and 7.1 MW), a hydraulic capacity range of 484 to 1,250 cubic feet per second (cfs), and an average annual generation of about 44,000 megawatthours (MWh).

The applicant has proposed to replace the turbine's runners, which would increase the generating capacity of the project. The proposed project would have a total nameplate generator capacity of 6.5 MW (minimum and maximum net output capacity of 3.0 and 7.9 MW), a hydraulic capacity range of 546 to 1,400 cfs, and an average annual generation of about 47,000 MWh.

In detail, the existing proposed project is described as follows:

(1) A dam consisting of (a) a 305.6-foot-long concrete gravity primary spillway section, about 26.4 feet high at a crest elevation of 482.64 feet mean sea level (msl), topped with six vertical lift gates, each measuring 40 feet wide by 11 feet high; and (b) a timber crib diversion dam, at the head of the power canal, about 32 feet long by 11 feet high at a crest elevation of 482.6 feet msl, topped with six steel gates, each measuring 5 feet by 6 feet.

(2) An excavated power canal, about 400 feet long by 50 feet wide by 8 feet deep;

(3) An intake house, known as the Rack House, containing (a) angled trashracks with ⅝-inch steel bars at 2-inch spacing, measuring 80 feet long by 14 feet high, and an area of 1,800 square feet; and (b) a siphon spillway;

(4) An underground steel penstock, 11 feet in diameter by 235 feet long;

(5) A brick and steel powerhouse, about 42 square feet by 17 feet high, equipped with one vertical Francis electric generating unit having (a) an existing nameplate capacity of 6.5 megawatts (MW) (minimum and maximum net output capacity of 2.5 and 7.5 MW), a hydraulic capacity range of 484 to 1,250 cubic feet per second (cfs), an average annual generation of 44,000 MWh, and a net head of 86 feet; and (b) the proposed nameplate capacity of 6.5 MW (minimum and maximum net output capacity of 3.0 and 7.9 MW), a hydraulic capacity range of 546 to 1,400

cfs, an average annual generation of 47,000 MWh, and a net head of 86 feet;

(6) An impoundment, about 1,200 feet long, having (a) a surface area of 16 acres; (b) a gross storage capacity of 107 acre-feet and a negligible usable storage capacity; and (c) a normal headwater elevation of 482.6 feet msl;

(7) A 4607-foot-long, 11-kilovolt (kV), underground transmission line; and

(8) Appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $2,741,982.

m. *Purpose of Project:* All project energy generated would be utilized in distribution to its customers.

n. This notice also consists of the following standard paragraphs: B1, and D5.

o. *Available Location on Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649.

11 a. *Type of Application:* New License.

b. *Project No.:* 2583–004.

c. *Date Filed:* December 17, 1991.

d. *Applicant:* Rochester Gas and Electric Corporation.

e. *Name of Project:* Station 5 Project.

f. *Location:* On the Genesee River, Monroe County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David K. Fingado, Rochester Gas & Electric Corp., 89 East Avenue, Rochester, NY 14649–0001, (716) 724–8108.

i. *FERC Contact:* Robert Bell (202) 219–2806.

j. *Deadline Date:* January 29, 1993; reply comments March 9, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D5.

l. *Description of Project:* The existing Station No. 5 Project's principal features consist of a dam structure, an impoundment, a powerhouse, and appurtenant facilities. For the existing condition, the project has a total nameplate generator capacity of 38.25 megawatts (MW) and an average annual generation of about 165,000 megawatthours (MWh). The Applicant proposes to replace the turbines' runners and rewind the generators, which would increase the generating capacity of the project. For the proposed condition, the project would have a total nameplate generator capacity of 43.88 MW and an average annual generation of about 177,000 MWh.

In detail, the existing and proposed project is described as follows:

(1) A concrete gravity dam consisting of (a) a 200-foot-long gate section with four Taintor gates, each measuring 50 feet long by 17 feet high and having a sill elevation of about 375.0 feet mean sea level (msl), and (b) two sector gate sections, each measuring 100 feet long by 17 feet high having a sill elevation of about 375.0 feet msl, separated by (c) a gate control building, 40 feet long by 67 feet wide, adjoining to (d) an intake house, about 97 feet long by 36 feet wide by 34 feet high, having (i) a horseshoe-shaped tunnel, 1,400 feet long by 16-foot-wide base, leading to (ii) a surge tank, 60 feet in diameter by 40 feet high, and (iii) three steel penstocks, that lead to the powerhouse, each 13 feet in diameter and 30 feet long;

(2) A concrete, masonry, and steel powerhouse, about 112 feet high by 75 feet wide by 95 feet long, equipped with three vertical Francis electric generating units having (a) the total existing rated capacity of 38,250 kilowatts (kW), a maximum hydraulic capacity of 4,300 cubic feet per second (cfs), an average annual generation of 165,000 MWh, and a net head of 130 feet; and (b) the total proposed rated capacity of 43,875 kW, a maximum hydraulic capacity of 5,000 cfs, an average annual generation of 177,000 MWh, and a net head of 130 feet;

(3) An impoundment having (a) a gross storage capacity of 414 acre-feet, (b) a usable storage capacity of 150 acre-feet; and (c) a normal pool headwater elevation of 391.5 feet msl; and

(4) Appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $12,746,877.

m. *Purpose of Project:* All project energy generated would be utilized in distribution to its customers.

n. This notice also consists of the following standard paragraphs: B1, and D5.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649.

12 a. *Type of Application:* Subsequent License.

b. *Project No.:* 2596–002.

c. *Date Filed:* December 4, 1991.

d.. *Applicant:* Rochester Gas and Electric Corporation.

e. *Name of Project:* Station 160 Project.

f. *Location:* On the Genesee River,Livingston County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David K. Fingado, Rochester Gas & Electric Corp., 89 East Avenue, Rochester, NY 14649–0001, (716) 725–8108.

i. *FERC Contact:* Robert Bell (202) 219–2806.

j. *Deadline Date:* January 29, 1993; reply comments March 9, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D1.

l. *Description of Project:* This Project consists of: (1) An existing 334-foot-long cut stone and concrete gravity dam varying in height from 20 feet to 30 feet; (2) an impoundment having a surface area of 4.5 acres and a storage capacity of 250 acre-feet with a normal water surface elevation of 579.1 feet msl; (3) the existing intake structure; (4) the existing concrete and masonry powerhouse containing one vertical francis turbine with a normal rating of 600-hp at 19 feet rated head at 150 revolutions-per-minute, and connected to a Westinghouse vertical synchronous generator with a rated capacity of 420-kW; (5) the existing tailrace; and (6) appurtenant facilities.

The licensee is increasing the generating capacity of the powerhouse from 340-kW to 420-kW by replacing the turbine runner and rewinding the generator.

m. *Purpose of Project:* All project energy generated would be utilized in distribution to its customers.

n. This notice also consists of the following standard paragraphs: B1, and D1.

o. *Available Location of Application:* A copy of the application, as amended

and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capital Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649.

13 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11289–000.

c. *Date Filed:* May 11, 1992.

d. *Applicant:* Village of Potsdam.

e. *Name of Project:* West Dam.

f. *Location:* On the Raquette River in the Village of Potsdam, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Frank O. Christie, 8 East Main Street, Malone, NY 12953, (518) 483–1945.

i. *FERC Contact:* Charles T. Raabe (tag) (202) 219–2811.

j. *Comment Date:* January 28, 1993.

k. *Description of Project:* The proposed project would consist of: (1) An excavated intake; (2) a new powerhouse containing a 1,000-kW generating unit operated at a 9.5-foot net head and at a flow of 1,500 cfs; (3) an excavated tailrace; (4) a 125-foot-long, 13.8-kV underground transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual energy production would be 3,000,000 kWh and that the cost of the studies under the permit would be $20,000. Energy produced would be sold to Niagara Mohawk Power Corporation. All facilities are and would be owned by the Village of Potsdam. Exemption for Project No. 2869, held by the Village of Potsdam, includes the West Dam.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11341–000.

c. *Dated filed:* September 30, 1992.

d. *Applicant:* Windsor Machinery Company, Inc.

e. *Name of Project:* Still River Hydroelectric Project.

f. *Location:* On the Still River, in Fairfield County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Harry A. Terbush, 16 Orbit Lane, Hopewell Junction, New York 12533, (914) 897–4194.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Comment Date:* January 28, 1993.

l. *Description of Project:* The proposed project would consist of: (1) An existing dam 8.5 feet high and 47 feet long; (2) an existing reservoir approximately 30,600 square feet with a storage capacity of approximately 122,400 cubic feet at a normal surface elevation of 250.3 feet; (3) a 36-inch-diameter, 15.5-foot-long penstock; (4) a new powerhouse containing one turbine-generator unit at a rated capacity of 75 kilowatts; (5) undetermined transmission line; and (6) appurtenant facilities. The total average annual generation will be 250,000 kilowatthours and the cost of the studies are $16,500. The owners of the dam are Lois Hunt and Alvin J. Tuck.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11352–000.

c. *Date filed:* October 14, 1992.

d. *Applicant:* Peak Power Corporation.

e. *Name of Project:* Crescent Modular Pumped Storage Project.

f. *Location:* On Crescent Mountain in Jefferson County, Colorado, near the town of Denver. T.2S, R.70W, sections 5 and 6; T.2S, R.71W, sections 1, 2, and 12.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791 (a)–825(r).

h. *Applicant Contact:* Rich S. Koebbe, Vice President, Peak Power Corporation, 10 Lombard Street, Suite 410, San Francisco, CA 94111, (415) 362–0622.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* February 5, 1993.

k. *Description of Project:* The proposed project would consist of (1) A 260-foot-high, 550-foot-long earthen dam; creating (2) a 35-acre reservoir with a storage capacity of 2,300 acre-feet and a surface elevation of 7,620 feet msl, to be used as the upper reservoir; (3) a 11-foot-diameter, 6,900-foot-long buried tunnel/penstock; (4) an underground powerhouse containing two pump-turbines with a combined installed capacity of 200,000 kW, producing an estimated average annual energy output of 12,500 GWh; (5) a tailrace; (6) a 100-foot-high, 1,250-foot-long earthen dam; creating (7) a 49-acre reservoir with a storage capacity of 2,300 acre-feet at elevation 6,200 feet msl, to be used as the lower reservoir; (8) a 100-foot-high, 1,250-foot-long earthen dam; (9) a substation; (10) a 115/230 kV, 7,000-foot-long transmission line from the substation to an existing Public Service of Colorado line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $1,000,000.

No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to the Public Service of Colorado.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

16 a. *Type of Application:* New License (Tendered Notice).

b. *Project No.:* 1922–008.

c. *Date filed:* November 19, 1992.

d. *Applicant:* The City of Ketchikan, dba Ketchikan Public Utilities.

e. *Name of Project:* Beaver Falls.

f. *Location:* On Beaver Falls Creek in Ketchikan Gateway Borough, Alaska. It occupies lands within the Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–.

h. *Applicant Contact:* Thomas W. Stevenson, General Manager, 2930 Tongass Avenue, Ketchikan, AK 99901, (907) 225–1000.

i. *FERC Contact:* Hector M. Perez at (202) 219–2843.

j. *Description of Project:* The existing project consists of the Silvis Development and the Beaver Falls Development.

The Silvis Development consists of: (1) The 60-foot-high, 135-foot-long Upper Silvis Dam with a crest elevation of 1,164 feet; (2) the Upper Silvis Spillway with a crest elevation of 1,154 feet; (3) an 800-foot-long spillway channel from the Upper Silvis Spillway to Lower Lake Silvis; (4) Upper Lake Silvis with a storage capacity of 38,000 acre-feet at maximum water surface of 1,154 feet; (5) the 980-foot-long Tunnel 1; (6) a 36-inch-diameter penstock; (7) Silvis Powerhouse containing a 2,100-kW generating unit; (8) a trapezoidal-shaped channel tailrace about 150 feet long discharging into Lower Lake Silvis; (9) a 2,900-foot-long, 5-kV submarine cable and a 7,100-foot-long, 34.5-kV aerial transmission line; and (10) other appurtenances.

The Beaver Falls Development consists of: (1) Lower Lake Silvis with a storage capacity of 8,052 acre-feet at maximum water surface elevation of 827 feet; (2) the 32-foot-high, 140-foot-long Lower Silvis Dam; (2) the 3-foot-high, 140-foot-long Lower Silvis Dam; (2) the 3-foot-high, 40-foot-long Beaver Falls Creek Diversion Dam, with 6-inch-high flashboards, about two-thirds of a mile downstream of Lower Lake Silvis; (3) an intake structure at Lower Lake Silvis; (4) the 3,800-foot-long Tunnel 2; (4) a 42-

inch-diameter penstock through Tunnel 3 feeding units 3 and 4 (2,000 kW each) in Beaver Falls powerhouse; (5) a 225-foot-long, 20-inch-diameter wood stave pipe from Tunnel 2 discharging into Beaver Falls Creek just upstream of the diversion dam; (6) a 28-inch-diameter, 4,170-foot-long penstock from the diversion dam feeding unit 1 (1,000 kW) at the Beaver Falls Powerhouse (unit 2 has been decommissioned); (7) 2 tailrace channels; and (8) other appurtenances.

k. Under § 4.32 (b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant. (January 19, 1993).

17 a. *Type of Application:* New License (Tendered Notice).

b. *Project No.:* 2188–030.

c. *Date filed:* November 25, 1992.

d. *Applicant:* The Montana Power Company.

e. *Name of Project:* Missouri-Madison.

f. *Location:* On the Madison River in Gallatin and Madison Counties, and on the Missouri River in Lewis, Clark, and Cascade Counties, Montana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael P. Manion, The Montana Power Company, 40 East Broadway, Butte, MT 59701, (406) 723–5421.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. *Description of Project:* The existing project consists of: (1) Hebgen Lake that serves to store and regulate water; (2) the Madison Development; (3) the Hauser Development; (4) the Holter Development; (5) the Black Eagle Development; (6) the Rainbow Development; (7) the Cochrane Development; (8) the Ryan Development; and (9) the Morony Development. The project has a total generating capacity of 292.1 MW and 73.6 MW would be added.

k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed (January 25, 1993) and must serve a copy of the request on the applicant.

18 a. *Type of Application:* Conduit Exemption (Tendered Notice).

b. *Project No.:* 11362–000.

c. *Date filed:* November 17, 1992.

d. *Applicant:* Cool Water, Inc.

e. *Name of Project:* Lower White.

f. *Location:* At the Dirty George pipeline, Hoosier Ditch, and Hoosier Ditch extension, in Lower Ranch, Delta, Colorado.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* G.C. Harned, President, Cool Water, Inc., 247 Rim Rock Drive, Durango, CO 81301, (303) 247–8024.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. *Description of Project:* The proposed project would consist of a powerhouse with a 935–kW unit.

k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant. (January 19, 1993).

19 a. *Type of Application:* Conduit Exemption (Tendered Notice).

b. *Project No.:* 11363–000.

c. *Date filed:* November 17, 1992.

d. *Applicant:* Cool Water, Inc..

e. *Name of Project:* Upper White.

f. *Location:* At the Dirty George Pipeline, in Lower Ranch, Delta, Colorado.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–.

h. *Applicant Contact:* G.C. Harned, President, Cool Water, Inc., 247 Rim Rock Drive, Durango, CO 81301; (303) 247–8024.

i. *FERC Contact:* Hector M. Pérez at (202) 219–2843.

j. *Description of Project:* The proposed project would consist of a powerhouse with a 565–kW unit.

k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant. (January 19, 1993).

Standard Paragraphs

A4. *Development Application*—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No completing applications or notices of intent may be filed in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such and application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed

under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D5. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (January 29, 1993 for Project Nos. 2366–001, 2367–001, 2582–002 and 2583–004). All reply comments must be filed with the Commission within 105 days from the date of this notice. (March 9, 1993 for Project Nos. 2366–001, 2367–001, 2582–002 and 2583–004.)

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D6. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments,

recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (January 19, 1993 for Project Nos. 2373–001 and 2532–005). All reply comments must be filed with the Commission within 105 days from the date of this notice. (March 2, 1993 for Project Nos. 2373–001 and 2532–005.)

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D9. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (January 19, 1993 for Project Nos. 1267–000, 2288–004, 2300–002, and 2311–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (March 2, 1993 for Project Nos. 1267–000, 2288–004, 2300–002, and 2311–001.)

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (January 11, 1993 for Project No. 10895–000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (February 23, 1993 for Project No. 10895–000.)

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS" "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E1. *Filing and Service of Responsive Documents*—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments,

recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: December 14, 1992, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30722 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-93-000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

December 10, 1992.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP93-93-000]

Take notice that on December 7, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93-93-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 an 157.211) for authorization to operate under the provisions of section 7 of the Natural Gas Act certain facilities that have been constructed pursuant to Section 311 of the Natural Gas Policy Act of 1978, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the subject facilities, Shorewood facilities, are located in Will County, Illinois. ANR further states that the authorization would allow any shipper, whether or not the shipper qualifies under section 311, the opportunity to use the subject facilities when capacity is available. ANR further states that it currently renders transportation service through the Shorewood facilities, pursuant to its FERC Gas Tariff, First Revised Volume No. 1-A, Rate Schedules FTS and ITS. It is also stated that ANR is not herein requesting sales authority.

Comment date: January 25, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Co.

[Docket No. CP93-91-000]

Take notice that on December 4, 1992, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93-91-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate an existing delivery point and appurtenant facilities for use in a transportation service for Coastal Gas Marketing, Inc. (Coastal), in Sherman County, Texas, under CIG's blanket certificate issued in Docket No. CP83-21-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to operate the Palo Duro Meter Station, which was installed under Natural Gas Policy Act section 311 authorization, in order to accommodate interruptible transportation service for Coastal to serve GGSI Gas Company for use in irrigation. It is stated that CIG will use the proposed delivery point for the delivery of up to 6,000 Mcf of natural gas per day for Coastal. It is asserted that the cost of installing the delivery point was $19,356. CIG states that the deliveries would have no impact on its peak day or annual deliveries. It is explained the CIG can accomplish the deliveries without detriment or disadvantage to its other customers.

Comment date: January 25, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Co.

[Docket No. CP93-96-000]

Take notice that on December 7, 1992, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP93-96-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to reactivate and operate an existing tap for delivery of natural gas to Mississippi Valley Gas Company (MVG) under Southern's blanket certificate issued in Docket No. CP82-406-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern proposes to activate an existing tap which is located at or near Milepost 6.7 on Southern's 16-inch Lake St. John-Cranfield Line in Adams County, Mississippi, for delivery of natural gas to MVG under its Rate Schedule IT (December 31, 1987, service agreement, as amended). Southern explains that MVG would redeliver the gas (up to 100 Mcf per day; 8,400 Mcf annually) to Serio Energy Corporation for use as gas lift gas at its production facilities in Adams County. Southern advises that no new facilities are required to be constructed or installed at the tap. Southern states that MVG has agreed to reimburse it for the cost of reactivating the tap, estimated to be $990. Southern further states that the gas would be transported for MVG under Southern's blanket certificate in Docket No. CP88-316-000.

Comment date: January 25, 1993, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30685 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-0163OT Colorado-53]

NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation; State of Colorado

December 14, 1992.

Take notice that on December 10, 1992, the Oil and Gas Conservation Commission of the State of Colorado (Colorado), submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Codell Formation underlying certain lands in Weld County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described on the attached appendix.

The notice of determination also contains Colorado's findings that the referenced portion of the Codell Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended area is the Codell Formation underlying certain lands in Weld County, Colorado more fully described as:

Township 5 North, Range 61 West
Sections 4–9: All
Sections 16–18: All
Township 5 North, Range 62 West
Sections 1–36: All
Township 5 North, Range 63 West
Sections 19: All
Sections 21–36: All
Township 6 North, Range 61 West
Sections 19–21: All
Sections 28–33: All
Township 6 North, Range 62 West
Sections 1–36: All
Township 6 North, Range 63 West
Sections 1–18: All
Township 7 North, Range 63 West
Sections 1–36: All

[FR Doc. 92–30732 Filed 12–17–92; 8:45 am]

BILLING CODE 6717–01–M

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

[Docket Nos. TQ93-2-20-001; TM 3-5-20-001 and TM 3-7-20-001]

December 14, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 9, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed To Be Effective December 1, 1992

2 Sub 16 Rev Sheet No. 21
2 Sub 16 Rev Sheet No. 22
2 Sub 16 Rev Sheet No. 25
2 Sub 16 Rev Sheet No. 26
2 Sub 16 Rev Sheet No. 27
2 Sub 16 Rev Sheet No. 28
2 Sub 16 Rev Sheet No. 29

Algonquin states that the revised tariff sheets listed above are being filed to comply with a Commission Letter Order dated November 24, 1992 ("Letter Order") in Docket Nos. TQ93–2–20–000 and TM93–5–20–000, Algonquin's latest regularly scheduled Quarterly Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment pursuant to Sections 17 and 39, respectively, of the General Terms and Conditions of its FERC Gas Tariff.

Algonquin further states that in this Letter Order, the Commission directed Algonquin to file revised tariff sheets to track CNG's currently effective winter rates within 15 days of the date of the Letter Order.

Algonquin is also filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, six (6) copies each of the following tariff sheets:

Proposed To Be Effective January 1, 1993

Sub 1 Rev 16 Sheet No. 21
Sub 1 Rev 16 Sheet No. 22
Sub 1 Rev 16 Sheet No. 26
Sub 1 Rev 16 Sheet No. 27
Sub 1 Rev 16 Sheet No. 28

Algonquin states that during the intervening period it filed tariff sheets to implement the Interim Tracking Mechanism for the 1993 funding of the Gas Research Institute ("GRI") in Docket No. TM93–7–20–000. Algonquin further states that these tariff sheets reflect the same base rates tracked in Docket Nos TQ93–2–20–000 and TM93–5–20–000 and therefore must also be revised to comply with the Letter Order.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30743 Filed 12–17–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92-59-000]

Chandeleur Pipe Line Co.; Notice of Conference

December 14, 1992.

Take notice that on Tuesday, December 22, 1992, a conference will be convened in the captioned restructuring docket to discuss Chandeleur Pipe Line Company's proposed plan to implement Order No. 636.

The conference will be held at the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, beginning at 10 a.m. All interested parties are invited to attend. Attendance at the conference does not convey party status. For additional information, interested persons may call Joan Dreskin at (202) 208–0738.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30735 Filed 12–17–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93-6-21-001]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

December 14, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 4, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of January 1, 1993:

Substitute Twenty-second Revised Sheet No. 26.1
Substitute Twenty-second Revised Sheet No. 26A.1
Substitute Eighteenth Revised Sheet No. 26B.1
Substitute Twenty-sixth Revised Sheet No. 26C
Substitute Nineteenth Revised Sheet No. 26D

On November 30, 1992, Columbia filed revised tariff sheets to reflect the Federal Energy Regulatory Commission's (Commission) approved

Gas Research Institute (GRI) funding unit level for 1993. Columbia, on December 4, 1992, filed to withdraw its October 30th and November 12, 1992 rate tariff sheets reflecting the switch from straight fixed variable (SFV) rate design to enhance fixed variable (EFV) pursuant to settlement in Docket No. RP91-161, et al. The instant filing reflects the reinstatement of the SFV rate design in the base rates that were in effect prior to Columbia's October 30, 1992 filing.

Columbia states that copies of the filing were served on Columbia's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30740 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-70-001]

Columbia Gulf Transmission Co., Notice of Proposed Changes in FERC Gas Tariff

December 14, 1992.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on December 4, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of January 1, 1993.

Substitute Seventh Revised Sheet No. 021

On November 30, 1992, Columbia Gulf filed revised tariff sheets to reflect the Federal Energy Regulatory Commission's (Commission) approved Gas Research Instituted (GRI) Funding Unit Level for 1993. Columbia Gulf on December 4, 1992 filed to withdraw its October 30th Rate Tariff Sheet reflecting the switch from Straight Fixed Variable (SFV) Rate Design to Enhanced Fixed Variable (EFV) pursuant to settlement in Docket No. RP91-160 *et al.* The instant filing reflects the reinstatement of the SFV Rate Design in the Base Rates that were in effect prior to Columbia Gulf's October 30, 1992 filing.

Columbia Gulf states that copies of the filing were served on Columbia Gulf's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30742 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-99-002]

Kern River Gas Transmission Co.; Notice of Report of Refunds

December 14, 1992.

Take notice that on November 16, 1992, Kern River Gas Transmission Company (Kern River) tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of refunds made in compliance with the Commission's October 20, 1992 order in Docket No. TM93-1-99-000. Kern River's report reflects it refunded ACA surcharges prematurely collected from its customers. Kern River states that on November 15, 1992, it refunded all principal and interest amounts in excess of $1.00 and will refund all amounts of $1.00 or less upon any customer's request.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before December 24, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30738 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-84-000]

Petition for Declaratory Order; Mississippi River Transmission Corp.

December 14, 1992.

Take notice that on November 30, 1992, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri, 63124, filed in Docket No. CP93-84-000 a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order finding that certain of MRT's facilities which have been certificated pursuant to Section 7(c) of the Natural Gas Act (NGA) as jurisdictional facilities but which have been functionalized as production and gathering facilities on MRT's books and records, in fact perform a transmission function and should be refunctionalized as transmission facilities for rate and accounting purposes.

In the event the Commission determines that any of the facilities that MRT proposes to refunctionalize to transmission does not perform a transmission function and therefore should remain refunctionalized as gathering, MRT requests that the Commission conform the jurisdictional status of the facility to its function and vacate any of the section 7(c) certificates authorizing MRT to construct and operate the facility as a transmission facility.

MRT states that the filing of this petition was prompted by the Commission's October 30, 1992, "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions, and Establishing Hearing Procedures" in Docket Nos. RP93-4-000 and RS92-43-000 (not consolidated). In that order, MRT was ordered to file a certificate application to refunctionalize certain facilities from production and gathering to transmission plant. MRT states that it already has certificates for the facilities at issue, and is thus seeking rehearing of the requirement that it file a certificate application. MRT states that in the event the Commission determines that there must be a separate proceeding to address the refunctionalization of MRT's facilities, it is filing this Petition for Declaratory Order in compliance with the October 30, 1992, order. MRT states that it

submits this petition subject to the outcome of its "Request for Rehearing" and, in the event the Commission determines that no separate proceeding is required, MRT respectfully requests that this filing be deemed moot and the filing fee refunded.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 4, 1993, 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 384.214 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.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30733 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-26-001]

Proposed Changes in FERC Gas Tariff; Natural Gas Pipeline Company of America

December 14, 1992.

Take notice that on December 10, 1992, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, Substitute First Revised Sheet No. 5 to be effective January 1, 1993.

Natural states the purpose of the filing is to correct a mathematical error on one of the tariff sheets it filed on November 20, 1992 in Docket No. TM93-2-26-000. That filing reflected revised GRI surcharges to be effective January 1, 1993 pursuant to section 26 of the General Terms and Conditions of Natural's tariff. The mathematical error was in the maximum volume injection charge of Rate Schedule BESS. The correct total rate should be $0.0400, not $0.0547.

Natural states that because the filing corrects a mathematical error that results in a reduction of the filed rate and there is only a short time before the requested effective date, that it mailed copies of the filing to interested state regulatory agencies and that it placed a notice of the filing on its Electronic Bulletin Board notifying its jurisdictional customers of the correction.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the substituted tariff sheet to become effective January 1, 1993, together with the other previously filed tariff sheets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30739 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-79-003, RP91-166-017 and RP93-20-001]

Change in FERC Gas Tariff; Northwest Pipeline Corp.

December 14, 1992.

Take notice that on November 25, 1992, Northwest Pipeline Corporation (Northwest) tendered the tariff sheets listed below to comply with Commission Orders issued May 1, 1992 and October 7, 1992.

Second Revised Volume No. 1

Substitute First Revised Original Sheet No. 123
Substitute First Revised Sheet No. 125
Second Revised Sheet No. 131
First Revised Sheet Nos. 132 through 135

Original Volume No. 2

Fifth Revised Sheet No. 3

Northwest states that the tariff sheets listed above are filed as a supplement to Northwest's November 6, 1992 Docket No. CP92-79 compliance filing. This filing also contains an accounting, in Annual PGA filing format, of Northwest's PGA activity for the eleven months ended October 31, 1992. Northwest requests a November 1, 1992 effective date for all tariff sheets contained in this filing.

Northwest states that copies of its filing have been served on all parties of record in Docket No. CP92-79 and upon all affected customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30734 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-166-005]

Compliance Filing; Panhandle Eastern Pipe Line Co.,

December 14, 1992.

Take notice that on December 8, 1992 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing revised tariff sheets in the above-mentioned proceeding.

Panhandle states that the revised tariff sheets to be effective November 1, 1992 and December 1, 1992 comply with the requirements of the Commission's November 16, 1992 Order on Rehearing and the Commission's December 1, 1992 Order Accepting Motion Rate-Compliance Filing Subject To Refund And Conditions in this proceeding and are without prejudice to Panhandle's rights on rehearing or judicial review in connection with the various Commission orders affecting this filing.

Panhandle states that while the December 1, 1992 Order accepted in most pertinent parts Panhandle's original motion filing of October 1, 1992, it required certain additional changes necessitating this additional filing. Panhandle states that the December 1, 1992 Order summarily required Panhandle to eliminate the system-wide access charge contained in its original filing in this Docket and replace it with a market zone only access charge. This filing complies with the Commission's requirement and eliminates the system-wide access charge.

Panhandle previously sought to move its Docket No. RP92-166-000 suspended rates into affect in a filing made October 1, 1992. However, prior to the issuance of an order respecting those motion rates, the Commission issued an order on November 16, 1992 which

indicated that certain changes would be required to the motion rates. Other orders of the Commission, particularly in connection with a Settlement of Docket Nos. RP91-229-012, *et al.*, which affected the rates in this proceeding also were issued after the October 1, 1992 motion rate filing, but prior to the issuance of an order respecting the motion rate filing. Accordingly, in light of those intervening Commission orders, on November 18, 1992 Panhandle filed revised rates to be effective November 1, 1992. Panhandle states that this filing replaces its filing in this docket of November 18, 1992 in every particular and requests that the November 18, 1992 filing be deemed to be withdrawn.

Panhandle states that in its June 1, 1992 Order Terminating Technical Conference Proceeding, Granting Rehearing in Part and Denying Rehearing in Part in Docket No. RP91-229-000, the Commission required Panhandle to alter the functionalization of its cost of service to reflect the current functionalization of facilities. 59 FERC at 61,893. Panhandle reflect that functionalization in its rates in Docket No. RP91-229-000 in a compliance filing submitted on July 31, 1992. In a subsequent Order Granting Rehearing in Part and Denying Rehearing in Part, in Docket No. RP91-229-007, 61 FERC ¶61,172 issued November 2, 1992, however, the Commission reversed itself and determined that Panhandle should be permitted to reflect the refunctionalization of facilities. On November 18, 1992 Panhandle filed an amendment to Docket No. CP90-1050-000 to clarify the material in this proceeding and to identify the specific facilities for which Panhandle seeks a certificate and/or refunctionalization from gathering to transmission. Accordingly, the rates herein reflect the changes in Docket No. CP90-1050-000 so that the certificate and rates conform to one another.

Panhandle states that it has also reflected the requirements of the November 16, 1992 Order on Rehearing to change the allocation of gathering costs between sales and transportation and to reflect what the Commission characterized as the allocation of fixed costs for the return on equity and related taxes.

In addition, Panhandle states that in its June 1, 1992 Order on Report Filed Pursuant to Opinion No. 369 and Motion Rate and Compliance Filing (59 FERC ¶61,246 (1992)), the Commission required Panhandle's rate for certain specified backhaul services to equal one-half the forward-haul rate. This requirement is reflected in the rates submitted herewith.

Panhandle states it has reflected the elimination, effective November 1, 1992 of costs associated with Trunkline Gas Company, consistent with the provisions of Article VII, Section 6 of the July 15, 1992 Settlement in Docket Nos. RP91-229-009, *et al.*, approved by Order of the Commission issued August 28, 1992.

In addition, Panhandle states that on October 29, 1992 the Commission permitted tariff sheets to become effective on November 1, 1992 implementing Rate Schedule FS. Accordingly, Panhandle has removed 10 Bcf of storage inventory and the costs assigned to Rate Schedule FS from the rates in this proceeding.

Panhandle states it has reflected the reduced settlement cost components associated with its former Canadian suppliers, as set forth in the October 2, 1992 Settlement in Docket Nos. RP91-229-012, *et al.* approved by order of the Commission issued October 30, 1992.

Panhandle states that the rates and tariffs submitted herewith also reflect ACA and PGA filings in Docket No. Docket No. TM92-4-28-000, Docket No. TM93-1-28-000, TQ92-5-28-000 and Docket No. TQ93-1-28-000, which have been made since Panhandle's rate filing of May 1, 1992, the latter of which is to be effective December 1, 1992.

Panhandle states that copies of the revised tariff sheets are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30737 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-18-001]

Proposed Changes in FERC Gas Tariff; Texas Gas Transmission Corp.

December 14, 1992.

Take notice that on December 9, 1992 Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

FERC Gas Tariff, First Revised Volume No. 2-A

Substitute Fifth Revised Sheet No. 10A
Substitute Fourth Revised Sheet No. 10C
Substitute First Revised Sheet No. 106
Substitute First Revised Sheet No. 107
Substitute First Revised Sheet No. 108
Substitute Original Sheet No. 108A

Texas Gas notes that the revised tariff sheets are being filed to correct the page headings on certain sheets contained in Texas Gas's November 30, 1992, filing reflecting changes in its General RD&D Funding Units (Docket No. TM93-2-18), and are proposed to be effective January 1, 1993. No other changes are proposed herein. Texas Gas requests to withdraw the First Review Volume No. 2-A sheets filed on November 30, 1992 (Fifth Revised Sheet No. 10A, Fourth Revised Sheet No. 10C, First Revised Sheet No. 106, First Revised Sheet No. 107, First Revised Sheet No. 108, and Original Sheet No. 108A), which are being replaced by the instant filing.

Texas Gas states that copies of the filling were served on Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 21, 1992. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30741 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-152-023]

Proposed Changes in FERC Gas Tariff; Williams Natural Gas Co.

December 14, 1992.

Take notice that Williams Natural Gas Company (WNG) on December 8, 1992,

tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Effective December 1, 1992

First Revised Thirteenth Revised Sheet No. 6
First Revised Fourteenth Revised Sheet No. 6A
First Revised Thirteenth Revised Sheet No. 9

Effective January 1, 1993

First Revised Fourteenth Revised Sheet No. 6
First Revised Fifteenth Revised Sheet No. 6A
First Revised Fourteenth Revised Sheet No. 9

WNG states that it filed a Stipulation and Agreement (Stipulation) on November 22, 1991 in the above referenced docket. Article I, Section 3, of the Stipulation requires WNG to file Revised Tariff Sheets within fifteen days after a Final Commission Order approving the Stipulation. Article I, Section 3 states that such Revised Tariff Sheets shall become effective on the first day of the billing month beginning after the date that the Commission's Order making the Stipulation effective becomes a Final Commission Order. A Final Commission Order was issued in this docket on August 5, 1992. The Revised Tariff Sheets to be effective December 1, 1992 are being filed in compliance with the Stipulation.

WNG is filing Revised Tariff Sheets to be effective January 1, 1993, to reflect the RP91-152 rates in the GRI filing made by WNG on December 1, 1992 in Docket No. TM93-2-43.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 21, 1992. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-30736 Filed 12-17-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. SBE-001]

Energy Conservation Program for Consumer Products; Application for Small Business Exemption

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes an Application for Small Business Exemption from the January 1, 1993, standard for Single Package Air Conditioning Systems submitted to the Department of Energy (DOE) by Consolidated Technology Corporation (CTC).

DATES: Data and information submitted by CTC to support this application are available for public review at Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. DOE will accept comment, data and information with respect to this application not later than (60 days from publication).

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. SBE-001, Mail Station CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0561.

FOR FURTHER INFORMATION CONTACT:

Edward O. Pollock, Jr., U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5778.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, the National Appliance Energy Conservation Amendment of 1988 (NAECA 1988), Public Law 100-357, and the Energy Policy Act of 1992 (EPACT), Public Law 102-486,[1] prescribes energy conservation standards for certain consumer products, including central air conditioners and heat pumps, and requires DOE to administer an energy conservation program for these products. For each of the covered products, the Act prescribes initial Federal energy conservation standards, section 325(b)-(h).

On February 7, 1989, DOE amended the prescribed procedures by adding 10 CFR part 430, subpart E, creating the small business exemption process, 54 FR 6080.

The small business exemption process allows the Assistant Secretary for Conservation and Renewable Energy to grant manufacturers of covered consumer products, with annual gross revenues that do not exceed $8 million, exemption from all or part of the applicable energy conservation standards.

The exemption terminates according to its terms but not later than twenty-four months after the effective date of the rule for which the exemption is allowed.

CTC manufactures a line of single package air conditioner heat pumps which are designed for use in manufactured/modular homes. The entire product line is designed to use a high efficiency scroll compressor. CTC claims that the manufacturer of the scroll compressor has oversold its product and efforts to expand production capabilities have been delayed; therefore, the manufacturer is unable to supply CTC with these compressors. Efforts by CTC to obtain a comparable compressor from other sources have also failed.

CTC has redesigned the product line to use a reciprocating compressor. Because reciprocating compressors are less efficient than scroll compressors and configuration and size constraints imposed by the manufactured/modular home industry limit other design changes, the units with reciprocating compressors are less efficient than the same size units with scroll compressors. For example, the CTC 2½ ton heat pump equipped with a scroll compressor having an energy efficiency ratio (EER) of 11.0, has an SEER of 10.0 and an HSPF of 6.8. The same unit equipped with a high efficiency reciprocating compressor with an EER of 10.28 in the cooling mode, has an SEER of 8.5 and an HSPF of 6.3. Since CTC product line equipped with reciprocating compressors will not meet

[1] Part B of Title III of EPCA, as amended by NECPA, NAECA, NAECA 1988 and EPACT, is referred to in this notice as the Act.

the January 1, 1993, standard for Single Package Heat Pump Air Conditioning Systems, CTC has requested a Small Business Exemption for a period of 24 months beginning January 1, 1993, though December 31, 1994, by which time CTC expects to be supplied with scroll compressors which will enable the product line to meet the standard.

CTC is an independently owned small business with gross annual sales below $8 million. Only two other companies are known to manufacture a similar product, Nordyne, Inc. and Coleman Industries. A copy of the CTC application for a Small Business Exemption has been transmitted to the Attorney General requesting a determination by the Attorney General that a failure to allow an exemption would likely result in a lessening of competition. Based upon a review of the CTC application; comments, data and information received with respect to this notice; and the Attorney General's written views, DOE will make a determination as to whether a Small Business Exemption should be granted to CTC.

Issued in Washington, DC, December 11, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

April 9, 1992.

U.S. Department of Energy,
Small Business Exemptions,
Appliance Efficiency Standards,
Assistant Secretary for Conservation and Renewable Energy,
Forrestal Building,
1000 Independence Avenue, SW.,
Washington, DC 20585.

Subject: Title 10—Energy, Chapter II, Subchapter D, Part 430—Energy Conservation Program for Consumer Products, Title III, Part B, Section 325(q)—Small Manufacturer Exemption.

Dear Sir: Consolidated Technology Corporation (CTC) manufactures central air conditioners and central air conditioning heat pumps. At this time because of circumstances beyond our control, we wish to apply for a Small Manufacture Exemption of the above subject. I am not sure as to the exact method of action needed to implement the above.

I am requesting that any information pertinent to the above be sent to me as soon as possible. Should you have any questions, please feel free to contact me. I want to thank you in advance for your timely consideration.

Sincerely,

Kevin W. Sawyer,

Vice President Engineering.

[FR Doc. 92-30768 Filed 12-17-92; 8:45 am]

BILLING CODE 6450-1-M

Office of Energy Research

Energy Research Financial Assistance Program Notice 93-05: Innovations in Tokamak Improvements and New Fusion Confinement Systems

AGENCY: Department of Energy, (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy (OFE) of the U.S. Department of Energy (DOE) announces its interest in receiving applications for funding to support innovations in tokamak improvements and new fusion confinement systems. This notice is issued in response to recent recommendations made by the Fusion Energy Advisory Committee (FEAC). These recommendations are summarized in the "Fusion Energy Advisory Committee Report on Program Strategy for U.S. Magnetic Fusion Research," dated September 23, 1992, which reads: "9. A Program for Innovative Fusion Concepts: In the FEAC letter to DOE dated June 12, 1992, the FEAC recommended that even as the U.S. fusion program implements a goal-oriented program strategy, the U.S. should encourage innovative ideas. In addition to the innovation encouraged by the existing Applied Plasma Physics (APP) program, FEAC recommended that a small but structured and highly visible periodic competition be established to foster new concepts and ideas that, if verified, would make a significant improvement in the attractiveness of fusion rectors. Predefined sunset clauses [see below] would help ensure that funds for new ideas were available on a periodic basis. The ideas to be funded might relate to improving aspects of the tokamak or other established confinement concepts, or to proposals from individuals and institutions that are not now part of the primary program activities. Priority should be given to testing scientifically well-founded concepts at the small-scale, proof-of-principle levels."

DATES: To permit timely consideration for award in Fiscal Year 1993, formal applications submitted in response to this notice must be received no later than 4:30 p.m., February 2, 1993. No electronic submissions of formal applications will be accepted.

ADDRESSES: Application kits and guides are available from: U.S. Department of Energy, Office of Fusion Energy, ER-542, Washington, DC 20585. Telephone requests may be made by calling (301) 903-3421. Formal applications referencing Program Notice 93-05 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER-64, Washington, DC 20585, Attn: Program Notice 93-05. The following address must be used when submitting applications by U.S. Postal Express Mail Service, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Blanken, Division of Advance Physics & Technology, Office of Fusion Energy, ER-542, U.S. Department of Energy, Washington, DC 20585, telephone (301) 903-3421.

SUPPLEMENTARY INFORMATION: In implementing the FEAC recommendations, the DOE Office of Fusion Energy will give priority to applications that can produce proof-of-principle results within three years. In the spirit of the FEAC recommendations regarding sunset clauses, it is not anticipated that the selected applications will be renewed as a part of this innovations program; the selected applicants will, however, be eligible to apply for support under the Magnetic Fusion Energy Program after successful completion of the proof-of-principle phase.

This notice requests that the detailed description of the proposed project component of a complete grant application required by 10 CFR 605.9(b)(2) should include a detailed research plan which includes the specific results expected at the end of the three-year grant period. Evaluation of this written component against the selection criteria set forth in 10 CFR part 605 will be the principal means for selecting the successful applications.

Contingent upon availability of FY 1993 appropriated funds, it is anticipated that approximately $1,000,000 will be available to initiate one to three new grants in the range $300,000 to $1,000,000 per year. At present, it is anticipated that a total of $1,000,000 will be available to fund initiated grants, if any, in both FY 1994 and FY 1995. However, future year funding will depend on the nature of the applications, suitable experimental progress and the availability of funds.

Information about the development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the ER Application Kit and Guide for the Special Research Grant Program and in

10 CFR part 605. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on December 8, 1992.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 92-30620 Filed 12-17-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4546-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 19, 1993.

FOR FURTHER INFORMATION OR A COPY OF THE ICR CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Information Collection from States in Accordance with the CERCLA Capacity Assurance Process, (EPA No. 1343.04). This is a renewal of a currently approved collection.

Abstract: Under section 104(c)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), EPA requires that States provide data and program information to assure that they have adequate capacity to treat, store, or dispose of all hazardous waste expected to be generated within or imported into the State for a twenty year period. Under CERCLA, States must provide this assurance in order to be eligible for Superfund remedial funds. The information States provide for the Capacity Assurance Process (CAP) includes: Current hazardous waste management practices; waste minimization program; projected future instate generation, imports, and exports of hazardous waste; and projected future hazardous waste management.

States prepare CAPs in accordance with the Guidance Document that EPA has developed in consultation with their States. The Guidance Document was developed to lessen the burden on States by providing suggested analytical methods, data sources, and presentation formats.

Burden Statement: The estimated average public reporting burden for this collection of information is about 466 hours per State for Phase I submissions; 677 hours per State for Phase II submissions; and 381 hours per State for Phase III submissions. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering data, and preparing and submitting the information to the Agency.

Respondents: States, Territories, and the District of Columbia.

Estimated Number of Responses: 54.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 73,405 hours.

Frequency of Collection: As Required.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 11, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-30653 Filed 12-17-92; 8:45 am]

BILLING CODE 6560-50-M

Office of Research and Development

[FRL-4546-1]

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another reference method for the measurement of ambient concentrations of nitrogen dioxide. The new reference method is an automated method (analyzer) which utilizes the measurement principle (gas phase chemiluminescence) and calibration procedure specified in appendix F of 40 CFR part 50. This new designated method is identified as follows:

RFNA-1292-090, "Lear Siegler Measurement Controls Corporation Model ML9841 Nitrogen Oxides Analyzer," operated on the 0-0.5 ppm range, at any temperature in the range of 15 °C to 35 °C, with a 5-micron Teflon filter element installed in the filter assembly behind the secondary panel and the service switch on the secondary panel set to the IN position, with the following menu choices selected: Range: 0.500 ppm; Over-Ranging: Disabled; Filter Type: Kalman; Calibration: Manual; Span Comp: Disabled; Pres/Temp/Flow Comp: On; with the 50-pin I/O board installed on the rear panel configured at any of the following voltage or current output settings: 0.1, 1, 5, 10 volts or 0-20, 2-20, 4-20 mA; and with or without any of the following options: Valve Assembly for External Zero/Span (EZS); Rack Mount Assembly; Internal Floppy Disk Drive.

This method is available from Lear Siegler Measurement Controls Corporation, 74 Inverness Drive East, Englewood, CO 80112-5189. A notice of receipt of application for this method appeared in the **Federal Register** (57 FR 39401, August 31, 1992).

A test analyzer representative of this method has 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 40 CFR part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by States and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of 40 CFR part 58 are permitted only with prior approval of EPA, as provided in 40 CFR 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, this designation applies to any analyzer which is identical to the analyzer described in the designation. In some cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

40 CFR 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 analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of 40 CFR part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer 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 40 CFR part 53.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been canceled or if adjustment of the analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (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 analyzer (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 analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will assist the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Courtney Riordan,

Assistant Administrator for Research and Development.

[FR Doc. 92–30655 Filed 12–17–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4546–2]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Availability of Environmental Impact Statements Filed December 7, 1992 Through December 11, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920486, Final Supplement, UMC, NC, Cherry 1 Military Operating Areas (MOA), Craven, Beaufort, Hyde, Pamlico and Washington Counties, Core MOA, and North Carolina Outer Banks/Cape Lookout National Seashore Establishments, Additional Mitigation Alternatives and Regional Cumulative Effects Analysis, NC, Due: January 13, 1993, Contact: Col. A. M. Lloyd (919) 466–2343.

EIS No. 920487, Draft EIS, FHW, NY, I–90/I–8 Connector to Route 4/43 at Washington Avenue Transportation Improvements, Funding and COE Permits, Town of North Greenbush, Rensselaer County, NY, Due: February 1, 1993, Contact: H. J. Brown (518) 472–3616.

EIS No. 920488, Draft EIS, AFS, ID, Trail Creek II Timber Sale, Implementation, Timber Harvest, Road Construction and Reconstruction, Trail, Ninemile and Packsaddle Creeks, Boise National Forest, Lowman Ranger District, Valley County, ID, Due: February 1, 1993, Contact: Dautis Pearson (208) 259–3361.

EIS No. 920489, Final EIS, BLM, AZ, Sanchez Open Pit Heap Leach Copper Mine Project, Construction and Operation, Permits Approval, Gila Mountain, Graham County, AZ, Due: January 19, 1993, Contact: Larry Thrasher (602) 428–4040.

EIS No. 920490, Draft EIS, USN, MD, Naval Air Warfare Center Aircraft Division Base Realignment, Naval Air Station Patuxent River, St. Mary's, Calvert and Charles Counties, MD, Due: February 1, 1993, Contact: Mike Bryan (202) 433–3387.

EIS No. 920491, Draft EIS, USN, TX, Chase Field Naval Air Station Disposal and Reuse, Implementation, Permits and Approval, City of Beeville, Bee County, TX, Due: February 1, 1993, Contact: Laurens Pitts (803) 743–0893.

EIS No. 920492, Draft EIS, FRC, LA, MS, West-East Cross Interstate Natural Gas Pipeline Project, Construction and Operation, Section 10 and 404 Permits, NPDES Permit and Right-of-Way Grant, several Parishes, LA and several Counties, MS, Due: February 1, 1993, Contact: Laura Turner (202) 208–0916.

EIS No. 920493, Final EIS, USN, NJ, SC, VA, US East Coast Homeporting Program, (two AOE–6 Class) Fast Combat Support Ships, Implementation and Site Selection, Naval Weapons Station Earle, Colts Neck, Monmouth Co., NJ; Yorktown Naval Weapons Station, Gloucester County, VA or Charleston Naval Weapons Station, Charleston County, SC, Due: January 13, 1993, Contact: Robert Schwarz (202) 433–3387.

EIS No. 920494, Final EIS, NOA, Atlantic Ocean Sharks Fishery Management Plan (FMP), Implementation, Possible NPDES, COE and Coast Guard Permits, Exclusive Economic Zone (EEZ) the Gulf of Mexico, Atlantic Ocean and the Caribbean Sea, Due: January 13, 1993, Contact: Richard H. Schaefer (301) 713–2334.

Amended Notices

EIS No. 920417, Revised Draft EIS, AFS, CA, Lake Tahoe Basin Management Unit (LTBMU) Forest Plan, New Information concerning the Lake of the Sky Visitor Information or Interpretative Center and Community Parking Development Project to Comply with the LTBMU Forest Plan,

Tahoe City, Lake Tahoe, Placer County, CA, Due: January 13, 1993, Contact: Jackie Faike (916) 573-2600. Published FR 10-30-92—Review period extended.

EIS No. 920418, Draft EIS, FRC, CA, Lower Mokelumne River Hydroelectric Project Modifications, Licensing, (FERC, No. 29116-004), Parts of Pardee and Camanhe Dams, Mokelumne River, CA, Due: March 1, 1993, Contact: John A. Schnagl (202) 219-2661. Published FR-10-30-92—Review period extended.

Dated: December 15, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92-30793 Filed 12-17-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4546-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 30, 1992 through December 4, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-FHW-D40255-PA Rating LO, Park Road Corridor Project, West Shore Bypass/US 422/222 and Warren Street Bypass Connection to the Outer Bypass/PA-3055, Funding and section 404 Permit, Berks County, PA.

Summary: EPA expressed a lack of objections to the project as stated. Because of planned residential and commercial development, the impacts should be minimal.

ERP No. D-FHW-D53307-PA Rating EC2, Lackawanna Valley Industrial Highway Project, Reconstruction and Redevelopment, I-81 to Dunmore and US 6 in Whites Crossing north of Carbondale, Funding and COE Section 404 Permit, Lackawanna Valley, Lackawanna County, PA.

Summary: EPA expressed concerns for the potential project impacts to natural and cultural resources in the Lackawanna Valley. Additional information is required in the FEIS on intersection analysis for air quality, the impacts of the Mayfield Shift, the Meredith Street bridge relocation, and the proposed mitigation for the unavoidable impacts.

ERP No. D-FHW-E40256-AL Rating EC2, Southern Bypass and Weatherly Road Extension Project, Hobbs Island Road to I-565 Interchange, Funding and COE Section 404 Permit, City of Huntsville, Madison County, AL.

Summary: EPA had concerns for the degradation of high quality wetlands and noise problems for residents along the highway. Additional information on wetland impacts, air quality modeling and wetland mitigation was requested.

Final EISs

ERP No. F-MMS-A02235-00 1993 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Lease Sales No. 142 and No. 143, Lease Offerings, offshore AL, LA, TX and MS.

Summary: EPA continued to have concerns about the impact of leasing on biologically sensitive offshore habitats without including protective environmental stipulations. EPA encourages MMS to commit to these protective measures before concluding lease sales for the affected planning areas.

Dated: December 15, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92-30792 Filed 12-17-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4544-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 19, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Region III: Chesapeake Bay Program

Title: Chesapeake Bay Attitudes Survey (EPA No. 1627.01).

Abstract: This ICR is a new collection in support of the Chesapeake Bay Program, a cooperative venture involving representatives from the EPA (Region III), the District of Columbia, the State of Maryland, and the Commonwealths of Pennsylvania and Virginia. Since its establishment in 1983, the Chesapeake Bay Program has been formally directing and conducting the restoration of the Chesapeake Bay. The restoration is now moving to a stage which will require greater involvement of the diverse communities that comprise the Chesapeake Bay area. To gain the active participation of these communities, it is critical that the Bay Program obtain baseline information on the attitudes, awareness and behavior of community members toward the Chesapeake Bay.

Following approval of this ICR, Chesapeake Bay Program representatives will conduct a voluntary telephone survey of randomly-selected households within the Chesapeake Bay area. One adult member of each selected household will be interviewed by a trained program representative using a standard interview guide. Respondents will be asked to provide general demographic information and specific information that includes: Their perception of the status of the Bay clean-up, the value of the Bay to their lives, their active support for the Bay clean-up and environmental efforts in general, and their knowledge of the Chesapeake Bay Program.

The information will be tabulated, analyzed, and compiled into a report which will be used by Bay Program representatives to refine their public outreach and communications strategy. A total of 2000 households will voluntarily participate in the survey.

Burden Statement: Public reporting burden for this collection of information is estimated to average 15 minutes per response including time for listening to instructions and responding to survey questions.

Respondents: Individual members of households within the Chesapeake Bay Area.

Estimated Number of Respondents: 2000.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: One time.

Estimated Total Annual Burden on Respondents: 500 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy

Branch (PM-223Y), 401 M Street, SW., Washington, DC, 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC, 20503.

Dated: December 10, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-30666 Filed 12-17-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4545-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Selective Enforcement Auditing Reporting Requirements (EPA ICR No. 11.06; OMB No. 2060-0064). This ICR requests renewal of the existing clearance.

Abstract: Motor vehicle manufacturers are subject to selective audits of production vehicles to verify that the prototype design can be manufactured and still meet emission requirements. Eighteen manufacturers keep records of emission tests and submit a summary of assembly-line emission testing to the Agency. From this information EPA selects approximately 8 vehicles each year for audits. Manufacturers subject to audits provide the EPA with emission test data, significant events and vehicle data, reports of SEA results, test facility descriptions, SEA laboratory check-out data, SEA test failure reports and an audit failure report. EPA uses this information to ensure that manufacturers follow the prescribed emissions test procedures, that their test equipment accurately measures emissions and that production vehicles conform to Federal emissions requirements when they come off the assembly line.

Burden Statement: The public reporting burden for this collection of information is estimated to average 234 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Motor vehicle manufacturers.

Estimated Number of Respondents: 18.

Estimated Total Annual Burden on Respondents: 4,216 hours.

Frequency of Collection: On occasion, quarterly and annually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW.,Washington, DC, 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC, 20530.

Dated: December 10, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-30667 Filed 12-17-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4544-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 19, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of the Administrator

Title: Preaward Compliance Review Report for All Applicants Requesting Federal Financial Assistance (ICR No. 275.05; OMB No. 2090-0014).

Abstract: This ICR is for an extension of an existing information collection in support of Title VI of the Civil Rights Act of 1964, and described at 40 CFR Part 7.80 and 28 CFR Part 42.406-42.407. The information will be used by the EPA to determine preaward compliance with Federal law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or age.

Under this ICR, applicants for grants must complete a form that requests information on: (1) Disparities in the services of the applicant's program or activities between minority and non-minority populations; (2) any outstanding lawsuits alleging discrimination or civil rights compliance reviews; (3) the applicant's receipt of, or application to, other Federal agencies for financial assistance; and (4) the accessibility of proposed facility under design to handicapped individuals (if applicable).

This application form is part of the construction grant application package which must be completed by grant applicants and forwarded to EPA for review by EPA grant specialists. There is no recordkeeping requirement.

Burden Statement: Public reporting burden for those subject to this collection of information is estimated to average 0.5 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information.

Respondents: State or local governments applying for construction grants.

Estimated Number of Respondents: 4,000.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,000 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC, 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and

Regulatory Affairs, 725 17th Street, NW.,Washington, DC, 20503.

Dated: December 10, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-30668 Filed 12-17-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4544-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 19, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Application for Registration of Pesticide-Producing Establishments (Form No. 3540-8) and Pesticide Report for Pesticide-Producing Establishments (Form No. 3540-16). (EPA ICR No. 0160.04; OMB No. 2070-0078). EPA ICR No. 0158, OMB No. 2070-0045, has been merged into this collection. This is a request for reinstatement of two previously approved collections.

Abstract: Under section 7(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), producers of pesticide products, active ingredients and devices, are required to register the establishment in which the pesticide is produced with the EPA. Under section 7(e) of the FIFRA any producer operating a registered establishment must submit a report to the Administrator of EPA 30 days after the establishment is registered, and then annually. Producers must report which types and amounts of pesticides, active ingredients, or devices are currently being produced. They are also required to disclosed the location of production, and the location of sale and distribution of pesticides. In addition, respondents must keep records of all the production data. EPA uses the information to perform risk assessments, to ensure compliance with the FIFRA, and to respond to Congressional requests.

Burden Statement: The public burden for this collection of information is estimated to average 1.2 hours per response for reporting and 0.8 hour per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, complete the forms, and review the collection of information.

Respondents: Operators of pesticide-producing establishments

Estimated Number of Respondents: 12,382.

Estimated Number of Responses Per Respondent: 1,057.

Estimated Total Annual Burden on Respondents: 16,724 hours.

Frequency of Collection: Once and annually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW.,Washington, DC, 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC, 20503.

Dated: December 10, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-30669 Filed 12-17-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Digital Audio Radio Service Satellite Systems Applications Launch Fee Required

[DA 92-1666]

December 9, 1992.

On October 13, 1992 the Commission released a Public Notice, DA 92-1408, requesting comment on the application filed by Satellite CD Radio (CD Radio). It also announced a cut-off for applications to be considered concurrently with CD Radio's and stated that concrete and comprehensive proposals must be filed by December 15, 1992 together with the appropriate fees. Commission staff have received numerous inquiries about fee issues and there appears to be confusion among potential applicants regarding what fee should accompany their proposals.

Parties wishing to file applications for U.S. domestic digital audio radio service satellite systems to operate in the downlink frequency band of 2310-2360 MHz to be considered concurrently with CD Radio's may do so on or before December 15, 1992. Consistent with our policies for domestic fixed-satellite applications, these applications must request authority to construct, launch and operate a system. An applicant seeking construction authority only will not be afforded concurrent consideration with the CD Radio proposal. Together with its detailed proposal, applicants must file, at a minimum, a construction application fee of $2030 for each space station included in its proposal. Applicants may also choose to file the fee for launch and operating authority, which is $70,000 per satellite, at this time. Because there has been some confusion about the appropriate fee to pay, applicants will be permitted to submit the launch and operating authority fee for their system proposals on or before January 15, 1993. Failure to file all fees by January 15, 1993 will result in the dismissal of the application.

For further information, contact Rosalee Chiara at 202-634-1781.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 92-30729 Filed 12-17-92; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1921]

Petitions for Reconsideration and Clarification and Petition for Stay of Actions in Rule Making Proceedings

December 15, 1992.

Petitions for reconsideration and clarification and petition for stay have been filed in the Commission rulemaking proceedings listed in this Pubic Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Opposition to these petitions must be filed January 4, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of allotments, FM Broadcast Stations, (Scotland Neck and Pinetops, North Carolina). (MM Docket No. 92-7, RM No. 7879). Number of Petitions Filed: 1.

Subject: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991. (CC Docket No. 92–90). Number of Petitions Filed: 8.

Petition for Stay

Subject: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991. (CC Docket No. 92–90). Number of Petitions Filed: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–30728 Filed 12–17–92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy on Assistance to Operating Insured Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Policy statement.

SUMMARY: This statement of policy revises the statement of policy of the Federal Deposit Insurance Corporation (the FDIC), which was published in the **Federal Register** on April 4, 1990, to implement several provisions in the Federal Deposit Insurance Corporation Improvement Act of 1991. In particular, this statement of policy incorporates amendments under that legislation to the Federal Deposit Insurance Act with respect to (1) the statutory cost test for FDIC-assisted resolutions of failed or failing insured depository institutions, and (2) new requirements for any FDIC assistance provided to an operating institution prior to the appointment of a conservator or a receiver for that institution.

EFFECTIVE DATE: December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Robert H. Hartheimer, Associate Director, Division of Resolutions, (202) 898–8789; Gail Patelunas, Assistant Director, Division of Resolutions, (202) 898–6779; Ruth R. Amberg, Senior Counsel, Legal Division, (202) 898–3736; Michael B. Phillips, Counsel, Legal Division, (202) 898–3753; Faye Cope, Senior Attorney, Legal Division, (202) 898–7265, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This statement of policy does not require any collections of paperwork pursuant to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that this statement of policy will not have a significant economic impact on a substantial number of small entities. In addition, this statement of policy will not impose regulatory compliance requirements on depository institutions of any size.

The text of the statement of policy follows:

FDIC Statement of Policy on Assistance to Operating Insured Depository Institutions

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) contained several provisions that affect the authority of the Federal Deposit Insurance Corporation (the FDIC) to provide assistance to operating insured depository institutions under section 13(c) of the Federal Deposit Insurance Act, as amended (the FDI Act), 12 U.S.C. 1823(c). As a result of these new statutory provisions, the Board of Directors of the FDIC has concluded that the FDIC's policy for assistance to operating insured banks and savings associations (the 1990 Policy Statement), which was published in the **Federal Register** on April 4, 1990,[1] should be revised. This policy statement replaces the 1990 Policy Statement.

I. Introduction

Section 13(c) of the FDI Act authorizes the FDIC to provide assistance to operating insured institutions (1) to prevent the "default" of insured depository institutions or to assist acquisitions of insured depository institutions that are "in danger of default",[2] or (2) if severe financial conditions exist that threaten the stability of a significant number of insured institutions or of insured depository institutions possessing significant financial resources, to lessen the risk to the FDIC posed by such insured institutions under such threat of instability.

In order for the FDIC to provide assistance to an operating insured depository institution, the FDIC must determine that the assistance meets the least-cost test set forth in section 13(c) of the FDI Act. That section, as amended by FDICIA, provides that the assistance (1) must be necessary to meet the obligation of the FDIC to provide insurance coverage for the insured deposits in such institution, and (2) must be the least costly to the deposit insurance fund of all possible methods for meeting that obligation.[3]

The FDIC has the authority to provide an operating institution assistance that does not meet the least-cost test only if the Secretary of the Treasury (in consultation with the President and upon the written recommendations of two-thirds of the Board of Directors of the FDIC and two-thirds of the Board of Governors of the Federal Reserve System) determines that the FDIC's compliance with the least-cost test would have adverse effects on economic conditions or financial stability and the assistance to the operating institution would avoid or mitigate such adverse effects.[4]

FDICIA also added a new prerequisite to the FDIC's authority to provide assistance to an operating insured depository institution. The FDIC may consider providing direct financial assistance under section 13(c) to an operating insured institution before the appointment of a conservator or receiver only if the FDIC determines that (1) grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the institution's capital levels are increased,[5] and (2) it is unlikely that the institution can meet all currently applicable capital standards without assistance.[6] In addition, before the FDIC may provide assistance to an operating insured institution, (1) the appropriate federal banking agency[7] and the FDIC must determine that, for such period of time as the agency or the FDIC considers to be relevant, the institution's management has been competent and has complied with applicable laws, rules, and supervisory directives and orders,[8] and (2) the FDIC must determine that the institution's management did not engage in any

[1] 55 FR 12559 (April 4, 1990).

[2] The terms "default" and "in danger of default" are defined in section 3(x) of the FDI Act, 12 U.S.C. 1813(x).

[3] See section 13(c)(4)(A)(ii) of the FDI Act, 12 U.S.C. 1823(c)(4)(A)(ii).

[4] See section 13(c)(4)(G) of the FDI Act, 12 U.S.C. 1823(c)(4)(G).

[5] See section 13(c)(8)(A)(i)(I) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(i)(I).

[6] See section 13(c)(8)(A)(i)(II) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(i)(II).

[7] "Appropriate Federal banking agency," is defined at 12 U.S.C. 1813(q), in part, to mean: (1) The Comptroller of the Currency, in the case of a national bank; (2) the Board of Governors of the Federal Reserve System, in the case of a state member insured bank; (3) the FDIC, in the case of a state nonmember insured bank; and (4) the Director of the Office of Thrift Supervision, in the case of any savings association.

[8] See section 13(c)(8)(A)(ii)(I) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(ii)(I).

insider dealing, speculative practice, or other abusive activity.[9] Any determination made by the FDIC to provide assistance to an operating insured institution under 13(c) must be made in writing and published in the **Federal Register**.[10]

This revised policy statement reflects several changes from the FDIC's 1990 Policy Statement. First, this statement of policy reflects the mandatory provisions added to section 13(c) of the FDI Act by FDICIA, in addition to the "Sense of the Congress" in section 143 of FDICIA which encourages the early resolution of troubled insured depository institutions.[11] Second, this statement reflects the experience of the FDIC with assistance transactions under its 1990 Policy Statement. Third, this statement has been reorganized so that the criteria are grouped into subject categories and the section applicable only to savings associations (part IV) follows the section regarding assistance to any operating insured institution. These organizational changes are not intended to have any substantive impact; rather, they are intended to facilitate use of the statement.

Proposals for assistance for any operating insured institution under section 13(c) of the FDI Act will be reviewed by the FDIC under the criteria listed in section III of this policy statement. Proposals for assistance for operating savings associations under section 13(k)(5) of the FDI Act also must meet the criteria listed in section IV of this policy statement.

Prior to October 1, 1993, proposals for assistance with respect to operating savings associations may be funded by the Resolution Trust Corporation (the RTC). Until the Savings Association Insurance Fund (the SAIF) has adequate funding,[12] the FDIC may request that the RTC, with the approval of the Thrift Depositor Protection Oversight Board, provide necessary funds for the SAIF's financial assistance operations.[13]

II. Timing for Open Assistance Proposals

In recent years, most of the proposals made for assistance to an operating insured depository institution have been received by the FDIC either after or, at best, shortly before grounds have existed for the appointment of a receiver. Generally, the receipt of a proposal for open assistance at that time is too late to prevent the appointment of a receiver by that institution's chartering authority.

Under section 13(c)(4) of the FDI Act, the FDIC must select the resolution alternative that involves the least cost to the relevant deposit insurance fund. Because of the cost savings inherent in FDIC-assisted transactions involving the appointment of a receiver for an institution,[14] it may be difficult for an open assistance proposal to be more cost-effective than an available closed bank resolution. Therefore, an open assistance proposal, to be acceptable, generally must be submitted substantially before grounds exist for the appointment of a receiver for the institution.[15] Moreover, because of the complexity of many transactional structures involving open assistance, the time required to negotiate terms acceptable to all parties and to obtain necessary regulatory and shareholder approvals, and FDICIA's "prompt corrective action" mandates,[16] the FDIC encourages any proposals for open assistance to be submitted well before grounds first exist for the institution's closure.[17] In general, this timing consideration will require the board of directors of the insured institution to make the difficult business judgment that the institution is likely enough to fail that the balance of their responsibilities, including those to depositors as well as shareholders, compels the board to seek assistance, and to make that judgment before it is certain that the institution will fail.

For larger institutions seeking open assistance, the FDIC believes that unless discussions commence roughly eighteen (18) months before the probable appointment of a receiver, it will be difficult to effect an open assistance transaction.

III. Criteria for the FDIC's Consideration of Proposals for Assistance to an Operating Depository Institution

A proposal for assistance to an operating insured depository institution will be evaluated pursuant to the following criteria:

A. Prerequisites for FDIC Financial Assistance

Criterion 1

The FDIC must determine that grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the depository institution's capital levels are increased.[18]

Criterion 2

The FDIC must determine that it is unlikely that the institution can meet all currently applicable capital standards without assistance.[19]

B. Financial Criteria for Open Assistance

Criterion 3

The cost of the proposal to the FDIC must be determined to be the least-costly alternative available.[20] In order to

[9] See section 13(c)(8)(A)(ii)(II) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(ii)(II).

[10] See section 13(c)(8)(B) of the FDI Act, 12 U.S.C. 1823(c)(8)(B).

[11] *See* FDICIA, Pub. L. 102–242, section 143, 105 Stat. 2281 (1992). The "Sense of the Congress" in section 143 of FDICIA encourages early resolution of troubled insured depository institutions, so long as the early resolution is consistent with achieving the resolution method that is least costly to the deposit insurance fund. Section 143 of FDICIA includes seven general principles that have been incorporated substantially into the criteria in this revised policy statement.

[12] *See* section 11(a)(6)(F) of the FDI Act, 12 U.S.C. 1821(a)(6)(F).

[13] *See* section 11(a)(6)(H) of the FDI Act, 12 U.S.C. 1821(a)(6)(H).

[14] *See, e.g.*, section 11(d), (e), (g) and (i) of the FDI Act, 12 U.S.C. 1821(d), (e), (g) and (i). Among the cost advantages favoring a resolution transaction following the appointment of a receiver for an institution are the effect of the receivership on the contingent liabilities of the failed institution, the potential for uninsured depositors and other unsecured creditors to share in the loss incurred on the institution and the ability of the FDIC as receiver to repudiate burdensome contracts.

[15] Under the least-cost test in section 13(c)(4) of the FDI Act, the FDIC evaluates open assistance proposals by comparing the cost of such proposals to the estimated cost of liquidating the institution and the estimated costs of other possible resolution transactions involving a closed institution. The costs of liquidation and possible resolution transactions involving a closed institution will be estimated as of the date on which the FDIC estimates that the appropriate regulatory authority will, or will be able to, appoint a receiver for the institution.

[16] *See* section 38(h)(3) of the FDI Act, 12 U.S.C. 1831o(h)(3).

[17] Section 131 of FDICIA, which added the "prompt corrective action" requirements under section 38 of the FDI Act, requires, among other provisions, that an insured depository institution that is "critically undercapitalized" be placed in receivership within ninety (90) days, unless the FDIC concurs in a conservatorship or the appropriate Federal banking agency for that institution and the FDIC concur that other action would better achieve the purposes of section 38 of the FDI Act. Pursuant to statutory mandates, the FDIC and the other bank and thrift regulatory agencies have set the "critically undercapitalized" level at a ratio of tangible equity to total assets of two(2) percent or less. See 57 FR 44866, 44897 (September 29, 1992).

Moreover, section 133 of FDICIA, effective December 19, 1992, expands the grounds on which a receiver or conservator may be appointed for an insured depository institution. See, *e.g.*, section 11(c)(5) of the FDI Act, 12 U.S.C. 1821(c)(5).

[18] This criterion is mandatory. See section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A).

[19] This criterion is mandatory. See section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A).

[20] This criterion is mandatory unless the Secretary of the Treasury makes a systemic risk determination. See section 13(c)(4) (A) & (G) of the FDI Act, 12 U.S.C. 1823(c)(4) (A) & (G). The least-cost test, as amended by FDICIA, requires that resolution alternatives be evaluated on a present-

ensure that a proposal for open assistance is the least-costly alternative, the FDIC will, in many cases, also seek proposals for resolving the institution on a closed basis.

Criterion 4

The proposal must provide for sufficient tangible capitalization, including capital infusions from outside private investment sources, to meet the regulatory capital standards of the appropriate federal banking agency.[21]

Criterion 5

The amount of the assistance and the new capital injected from outside sources must provide for a reasonable assurance of the future viability of the institution.[22]

Criterion 6

Applicants must establish quantitative limits on all financial items in the proposal. For example, if applicants request indemnification from the FDIC for certain contingent liabilities, assistance proposals must include ceilings on the FDIC's financial exposure.

C. Competition

Criterion 7

The FDIC shall consider assistance proposals within a competitive context which provides for the solicitation by the FDIC of interest from qualified entities.[23]

D. FDIC Financial Contribution and Repayment

Criterion 8

The FDIC will consider on a case-by-case basis whether the proposal shall provide the FDIC with an equity or other financial interest in the resulting institution.[24]

Criterion 9

It is preferable that any proposal for FDIC assistance provide for repayment of such assistance in whole or in part.

E. Impact on Shareholders and Creditors

Criterion 10

Preexisting shareholders and debtholders of the assisted insured institution shall make substantial concessions. In general, any remaining ownership interest of preexisting shareholders shall be subordinate to the FDIC's right to receive reimbursement for any assistance provided.

F. Due Diligence

Criterion 11

An operating institution seeking assistance must consent to unrestricted on-site due diligence reviews by the FDIC (or its agents) and FDIC-monitored, on-site due diligence reviews by all potential acquirers determined by the FDIC to be qualified after consultation with the appropriate federal banking agency.

G. Acquisition Within a Holding Company Structure

Criterion 12

The proposal must ensure that the assistance will benefit the institution and the FDIC and not be diverted to other purposes. If the assisted institution is a subsidiary of a holding company, the proposal should be structured so that FDIC assistance is not provided to the holding company, except where compelling reasons require it, and then only when the holding company acts as a conduit immediately to provide the entire amount of assistance to the failing insured depository institution.[25]

Criterion 13

If the assisted institution is a subsidiary of a holding company, the proposal should be structured so that available resources from the holding company and its other insured subsidiaries and/or nondepository subsidiaries are used to make a significant contribution toward minimizing the financial exposure of the FDIC.

H. Assets

Criterion 14

Although the FDIC will consider on a case-by-case basis whether to acquire or service assets of assisted institutions, assistance proposals should generally provide for the surviving institution to service the assets of the assisted institution. Under appropriate circumstances, the FDIC may consider loss-sharing, gain-sharing and other incentive arrangements on distressed assets.

I. Supervisory Concerns With Respect to Management

Criterion 15

The appropriate federal banking agency and the FDIC must determine that, during such period of time preceding the date of such determination as the agency or the FDIC considers to be relevant, management of the institution was competent and complied with applicable laws, rules, and supervisory directives and orders. In no event will such determination, for assistance transaction purposes, estop or impair the FDIC or the appropriate federal banking agency from pursuing any enforcement, civil or criminal remedies or redress against any person.[26]

Criterion 16

The FDIC must determine that the management of the resulting institution did not engage in any insider dealing,

value basis, using a realistic discount rate. See section 13(c)(4)(B) of the FDI Act, 12 U.S.C. 1823(c)(4)(B). This cost determination is premised on evaluating all possible resolution alternatives and must be made as of the date the FDIC determines to provide section 13(c) assistance. See section 13(c)(4)(C) of the FDI Act, 12 U.S.C. 1823(c)(4)(C). In calculating the cost of such assistance, the FDIC must treat any tax revenues that the U.S. Treasury would forego as a result of an assistance transaction, to the extent they are reasonably determinable, as revenues foregone by the applicable deposit insurance fund.

[21] The regulatory capital requirements of the respective federal banking agencies are stated in: (1) For the Office of the Comptroller of the Currency, 12 CFR 3.6; (2) for the Board of Governors of the Federal Reserve System, Appendix A, Appendix B and Appendix D to Regulation Y, 12 CFR Appendix A, Appendix B and Appendix D to part 225; (3) for the FDIC, 12 CFR part 325, including Appendix A and Appendix B to part 325; and (4) for the Office of Thrift Supervision, 12 CFR part 567.

[22] Viability may be demonstrated by pro forma projections based on reasonable assumptions regarding the use of the assistance, earnings, reserve levels, asset quality trends, anticipated dividends, and capital levels and needs. The viability projections will be reviewed closely by the FDIC for the reasonableness of assumptions. In addition, under normal circumstances, enough new capital should come from outside private sources to represent a vote of confidence in the viability of the assisted institution. By contrast, as an example, a de minimus investment which gave the investor an option on the whole institution would not represent a market validation of the assurance of viability.

[23] The FDIC has determined that under 12 U.S.C. 1823(c)(4), in order to demonstrate that the least-costly resolution was selected, an assistance transaction generally cannot be the result of a single-party negotiation, but rather must be the result of a competitive process.

[24] Under 12 U.S.C. 1823(c)(5), the FDIC is prohibited from purchasing the voting or common stock of an insured institution; however, this restriction does not preclude the acceptance by the FDIC of non-voting preferred stock, warrants, or other forms of equity or equity-equivalent arrangements.

[25] See section 13(c)(3) of the FDI Act, 12 U.S.C. 1823(c)(3).

[26] This criterion is mandatory. See section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A). The FDIC interprets section 13(c)(8)(A)(ii) of the FDI Act that the management criterion applies to the management of the resulting institution, including any management retained from the predecessor institution, but not including predecessor management that is not retained. This interpretation is based on the relevant statutory provisions and their legislative history and reconciles the management criteria of section 13(c)(8)(A)(ii) with the statutory mandate of minimizing the cost of resolutions and with Congress' desire to encourage early resolutions, as reflected in section 143 of FDICIA.

speculative practice, or other abusive activity.[27]

Criterion 17

The proposal must provide for adequate managerial resources. Continued service of any directors or senior ranking officers who served in a policy-making role of the assisted institution, as may be determined by the FDIC, will be subject to approval by the FDIC.

Criterion 18

Any renegotiation or termination of management contracts is to be completed prior to the granting of assistance. Further, the FDIC may review and object to any or all parts of any compensation arrangements (including termination clauses) covering these individuals during the period assistance is outstanding.[28] In no event will the failure to terminate a particular management contract estop the FDIC or the appropriate Federal banking agency from pursuing any enforcement, civil, or criminal remedies or redress against any person unless there is a written statement explicitly waiving such rights that is signed by an authorized official of the FDIC and the appropriate Federal banking agency.

J. Fee Arrangements

Criterion 19

All fee arrangements to attorneys, investment bankers, accountants, consultants, and other advisors and agents incident to requests for financial assistance must be disclosed to the FDIC and will be evaluated in determining the cost of the assistance package. Excessive fees must be avoided.

IV. Open Assistance for SAIF-Insured Institutions

Section 13(k)(5) of the FDI Act provides that the FDIC shall consider proposals for financial assistance by eligible SAIF members before grounds exist for appointment of a conservator or receiver for such institutions. Proposals under section 13(k)(5) must meet the nine criteria of the statute, as follows:[29]

(1) Grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the member's "tangible capital" is increased.[30]

(2) It is unlikely that the institution can achieve positive tangible capital without assistance.

(3) Assistance by the FDIC likely would lessen the risk to the SAIF.

(4) Before the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the institution was solvent under applicable regulatory accounting principles but had negative tangible capital.[31]

(5) The negative tangible capital position of the institution is substantially attributable to supervisory transactions initiated by the Federal Home Loan Bank Board (FHLBB) or the Federal Savings and Loan Insurance Corporation (FSLIC).

(6) The institution is a "qualified thrift lender"[32] or would be a qualified thrift lender if commercial real estate owned and nonperforming commercial loans acquired in supervisory transactions initiated by the FHLBB or the FSLIC were excluded from the institution's total assets.

(7) The appropriate federal banking agency has determined that the institution's management is competent and in compliance with applicable laws and regulatory directives.

(8) The institution's management did not engage in insider dealing, speculative practices, or other activities that jeopardized the institution's safety or soundness or contributed to its impaired capital position.

(9) The institution's offices are located in an "economically depressed region".[33]

Applicants seeking FDIC assistance pursuant to section 13(k)(5) generally will be required to meet all nineteen criteria listed in part III of this policy statement, in addition to the aforementioned statutory criteria in section 13(k)(5). However, with respect to Criterion 17 in part III of this policy statement, the FDIC generally will look to the determination of the Office of Thrift Supervision, but will retain discretion to review the merits of individual directors and senior ranking officers.

Assistance proposals with respect to SAIF member institutions under section 13(k)(5) that do not meet all nine of the aforementioned criteria may be submitted to the FDIC for consideration under section 13(c).

V. Other Information

Any proposal requesting assistance to prevent the closing of an insured depository institution should be addressed to the appropriate FDIC regional offices of the Division of Supervision and the Division of Resolutions and should provide the amount, terms, and conditions to the assistance requested as well as the details of the financial support to be provided. This information must be presented in sufficient detail to permit the FDIC to estimate the maximum cost that will be incurred as a result of the proposal and to determine the extent to which the proposal satisfies the criteria of this policy statement.

With respect to the management determinations set forth in Criteria 15, 16, 17 and 18 in part III, a proposal must include information about proposed management of the resulting assisted institution. Specifically, the proposal must identify all individuals who would exercise significant influence over, or participate in, major policy-making decisions of the insured depository institution proposed to be assisted, without regard to title, salary or compensation. This list would include, without limitation, all directors, the chief executive officer, the chief managing official (in an insured state branch of a foreign bank), chief operating officer, chief financial officer, chief lending officer and chief investment officer.

Copies of the proposal also should be provided to (1) the Director of the Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429, (2) the Director of the Division of Resolutions, FDIC, 550 17th Street, NW., Washington, DC 20429, (3) the institution's chartering authority, and, (4) if approvals under the Bank Holding Company Act are required, the appropriate Federal Reserve Bank.

By Order of the Board of Directors. Dated at Washington, DC this 8th day of December, 1992.

[27] This criterion is mandatory. See section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A). See footnote 26, *supra*.

[28] In addition, under section 18(k)(1) of the FDI Act, the FDIC may "prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment." See 12 U.S.C. 1828(k)(1). The terms "golden parachute payment" and "indemnification payment" are defined in 12 U.S.C. 1828(k) (4) and (5)(A), respectively.

[29] The nine criteria for proposals submitted under section 13(k)(5) of the FDI Act are listed in subsections (k)(5)(A)(i)(I)–(III) and (A)(ii)(I)–(VI) of section 13 of the FDI Act, 12 U.S.C. 1823 (k)(5)(A)(i)(I)–(III) and (A)(ii)(I)–(VI).

[30] "Tangible capital" is defined in section 5(t)(9)(C) of the Home Owners' Loan Act, as amended (the HOLA), 12 U.S.C. 1464(t)(9)(C).

[31] *See* section 13(k)(5)(A)(ii)(I) of the FDI Act, 12 U.S.C. 1823(k)(5)(A)(ii)(I). Included among the accounting changes enacted under FIRREA was a five-year phaseout of qualifying supervisory goodwill as a component of "core capital", as defined in section (5)(t)(9)(A) of the HOLA, 12 U.S.C. 1464(t)(9)(A). The requirements for the phaseout of supervisory goodwill are set forth in section 5(t)(3) of the HOLA, 12 U.S.C. 1464(t)(3).

[32] *See* section 10(m) of the HOLA, 12 U.S.C. 1467a(m), which was amended by section 301 of FIRREA.

[33] *See* section 13(k)(5)(C) of the FDI Act, 12 U.S.C. 1823(k)(5)(C); 12 CFR 357.1.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-30673 Filed 12-17-92; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3094-EM]

Rhode Island; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: November 20, 1992.

SUMMARY: This notice amends the notice of an emergency for the State of Rhode Island (FEMA-3094-EM), dated September 16, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective November 20, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-30752 Filed 12-17-92; 8:45 am]

BILLING CODE 6718-02-M

[Docket No. FEMA-REP-5-OH-3]

Ohio Radiological Emergency Response Plans

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Region V Office of the Federal Emergency Management Agency gives notice that it has received radiological emergency response plans from the State of Ohio. These plans support the State of Ohio, and include the plans of local governments near the Cleveland Electric Illuminating Company's Perry Nuclear Power Plant, located in Lake County, Ohio.

DATE PLANS RECEIVED: May 24, 1989.

ADDRESSES: Comments on the plans may be submitted in writing to Janet M. Odeshoo, Chief, Natural and Technological Hazards Division, Federal Emergency Management Agency, Region V Office, 175 West Jackson Boulevard, Fourth Floor, Chicago, Illinois 60604, on or before January 19, 1993.

Copies of the plans are available for review at the Federal Emergency Management Agency, Region V Office, 175 West Jackson Boulevard, Fourth Floor, Chicago, Illinois 60604. Please call (312) 408-5500 in advance to arrange a time to review the plans. Copies are also available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, 44 CFR 5.26. See **SUPPLEMENTARY INFORMATION** below for further information on requesting copies of the plans.

FOR FURTHER INFORMATION CONTACT: Janet M. Odeshoo, Federal Emergency Management Agency, Region V Office, 175 West Jackson Boulevard, Fourth Floor, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Under 44 CFR 350.7, "Application by State for Review and Approval," the State of Ohio submitted its Radiological Emergency Plan for the State of Ohio and Affected Counties to the Federal Emergency Management Agency, Region V Office for review and approval under 44 CFR part 350.

Included in the submission are plans for the State of Ohio and for Lake, Ashtabula and Geauga Counties which are wholly or partially within the plume exposure pathway emergency planning zone of the Perry Plant.

Copies of the plans are available for review at the Federal Emergency Management Agency, Region V Office, 175 West Jackson Boulevard, Fourth Floor, Chicago, Illinois 60604. They are also available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, 44 CFR part 5.26. The four plans site-specific to the Perry Nuclear Power Plant are: The Ohio Plan for Response to Radiation Emergencies at Licensed Nuclear Facilities (542 pages), Lake County Emergency Response Plan for the Perry Nuclear Power Plant (442 pages), Ashtabula County Radiological Emergency Preparedness Plan (264 pages), and Geauga County Radiological Emergency Response Plan (213 pages). Reproduction fees are $.10 a page payable at the time the copies are requested.

The Perry Nuclear Power Plant public meeting was conducted February 20, 1985, at the Lakeland Community College Center, Kirtland, Ohio. Announcement of the public meeting was published in the Cleveland Plain Dealer and other local newspapers. Local radio and television stations announced the meeting.

Dated: December 14, 1992.

Arlyn F. Brower,

Regional Director, FEMA Region V.

[FR Doc. 92-30751 Filed 12-17-92; 8:45 am]

BILLING CODE 6718-20-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Puerto Rico Ports Authority, et al.

The Federal Maritime Commission hereby gives notice of the filing 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, 800 North Capitol Street, NW., 9th Floor. 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.

Agreement No.: 224-200708

Title: Puerto Rico Ports Authority/ Antilles Shipping Terminal Agreement

Parties: The Puerto Rico Ports Authority ("Port") Antilles Shipping Corporation ("Antilles")

Synopsis: The subject Agreement permits Antilles the exclusive use of the Port's Isle Grande Terminal for $380,000 per year, subject to five percent increases every five years during the initial 25-year term of the lease. The Port will undertake necessary construction and improvements.

Dated: December 14, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-30675 Filed 12-17-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Council on Physical Fitness and Sports

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: January 10, 1993–8:30 a.m. to 4 p.m.

ADDRESSES: ANA Hotel (Westin), 2401 M Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Matthew Guidry, Ph.D., Deputy Executive Director, President's Council on Physical Fitness and Sports, 701 Pennsylvania Ave., NW., Suite 250, Washington, DC, 202/272–3424.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order #12345, and subsequent orders. The functions of the Council are:

(1) To advise the President and Secretary concerning progress made in carrying out the provisions of the Executive Order and recommending to the President and Secretary, as necessary, actions to accelerate progress;

(2) Advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports actions to extend and improve physical activity programs and services;

(3) Advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the members of the national program of physical fitness and sports, to report on ongoing Council programs, and to plan for future directions.

Dated: December 15, 1992.

Matthew Guidry,

Deputy Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 92–30801 Filed 12–17–92; 8:45 am]

BILLING CODE 4160–17–M

Agency for Health Care Policy and Research

National Advisory Council for Health Care Policy, Research, and Evaluation Meeting

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Thursday, January 21, from 9 a.m. to 5:30 p.m., and on Friday, January 22, from 9 a.m. to 10:30 a.m.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act, a meeting closed to the public will be held on January 22, 1993, from 10:45 a.m. to 2 p.m. to review, discuss, and evaluate grant applications. The discussion and review of grant applications could reveal confidential personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

ADDRESSES: The meeting will be at the Hyatt Regency, 7400 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, suite 603, Rockville, Maryland 20852, (301) 227–8459.

In addition, if sign language interpretation or other reasonable accommodations for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, on (301) 227–6662 no later than January 8, 1993.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to the activity of AHCPR to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are: Linda H. Aiken, Ph.D.; Edward C. Bessey, M.B.A.; Marion F. Bishop, Ph.D.; Linda Burnes Bolton, Dr.P.H.; Joseph T. Curti, M.D.; John W. Danaher, M.D.; David E. Hayes-Bautista, Ph.D.; William S. Kiser, M.D.; Kermit B. Knudsen, M.D.; Norma M. Lang, Ph.D.; Barbara J. McNeil, M.D., Ph.D.; Walter J. McNerney, M.H.A.; Lawrence H. Meskin, D.D.S., Ph.D.; Theodore J. Phillips, M.D.; Louis F. Rossiter, Ph.D.; Barbara Starfield, M.D.; and Donald E. Wilson, M.D.

There also are Federal ex officio Members. These members are: Administrator, Substance Abuse and Mental Health Services Administration; Director, National Institutes of Health; Director, Centers for Disease Control; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Thursday, January 21, 1993, the open portion of the meeting will begin at 9 a.m. with the call to order by the Council Chairman. The Administrator will provide an update on AHCPR activities. The AHCPR Legislative officer will conclude the morning meeting with an update on the recent AHCPR reauthorization as well as a discussion on health care reform. In the afternoon the Deputy Administrator, AHCPR, will update the Council on the issues of market forces, quality of care, and primary care, discussed by the Council at the September meeting. Following that discussion the Deputy Administrator also will provide an update on AHCPR Minority Health Resource Centers. Concluding the Thursday meeting will be discussion by the Council and AHCPR staff on guideline selection criteria. The Council will recess at 5:30 p.m.

On Friday, January 22, 1993, the Council will resume at 9 a.m. with a discussion on AHCPR technology assessment activities. The open meeting will adjourn at 10:30 a.m. The Council will begin the closed portion of the meeting to review grant applications from 10:45 a.m. to 2 p.m. The meeting will then adjourn at 2 p.m.

Agenda items are subject to change as priorities dictate.

Dated: December 14, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92–30731 Filed 12–17–92; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control and Prevention Assistance Programs

AGENCY: Centers for Disease Control and Prevention (CDC). Public Health Service, HHS.

ACTION: Request for comments.

SUMMARY: Since 1985, the Centers for Disease Control and Prevention (CDC), as part of the terms and conditions for receipt of CDC funds for human immunodeficiency virus (HIV) prevention programs, has required that all educational and related program materials be reviewed by a Program Review Panel designated by the funded organization. Since education about preventing HIV transmission involves effectively presenting sensitive subject matter, the purpose of this requirement has been to preclude local controversies over the use of Federal funds and thereby disrupting CDC-funded programs by requiring a careful consideration of the content and intended audience for the materials and programs. A guidance document for this review, entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs," was revised and published in the **Federal Register** on March 30, 1992, (57 FR 10794).

On May 11, 1992, the U.S. District Court for the Southern District of New York found unconstitutional the use of the "offensiveness" standard by Program Review Panels which review AIDS education materials and activities in CDC assistance programs. *Gay Men's Health Crisis* v. *Sullivan*, 88-CIV-7482 (S.D.N.Y. 1992). On May 27, 1992, the court enjoined CDC from further application or enforcement of the "offensiveness" standard, as provided in paragraph 1.b. and 2.d. of the Revised Terms published on March 30, 1992.

In response to this decision, an "Interim Revision" of the content guidelines were published in the June 15, 1992, **Federal Register** (57 FR 26742) and recipients in CDC assistance programs were instructed to adhere to these revised requirements. On July 31, 1992, CDC published a notice (57 FR 33964) stating that there would be no appeal of the District Court's decision and that the interim revisions, as published in June, would continue to remain in effect for CDC-funded AIDS prevention programs.

CDC is now soliciting comments with respect to the current version of these content guidelines. A copy is included for reference in this notice.

EFFECTIVE DATE: February 16, 1993.

FOR FURTHER INFORMATION CONTACT: Gary West, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), (404) 639-1480.

SUPPLEMENTARY INFORMATION: Before making any further revisions to the guidelines, CDC requests comments from interested parties, especially state/local health departments and other current grantees, on the Interim Revision of the content guidelines and will carefully consider all comments in the revision process. In reviewing the terms and conditions which are set forth below, these questions should be addressed:

1. Program Review Panels (PRPs) were required by CDC to allow careful consideration of the content of AIDS-related information and educational materials. Such attention was thought to be necessary to preclude disruptions of HIV prevention programs as a result of local controversies over the use of Federal funds to develop or disseminate these materials. Based on the experience of your agency or organization, do you believe that the PRPs have assisted your HIV prevention efforts by precluding or minimizing such controversies?

2. Do you believe there is a continuing need for the PRPs or for some similar process involving community review of AIDS-related information or educational materials developed or disseminated with CDC funds?

3. Do you believe that important AIDS prevention information has been or will be withheld from dissemination due to the current AIDS content guidelines? Give examples.

4. What improvements could CDC make to the PRP requirements, review principles, or review process that would increase its usefulness in obtaining community input, enhance the quality and effectiveness of materials, and reduce the burden on grantees?

5. Are there ways, other than PRPs, through which careful review of materials could be accomplished with community input? Please provide detailed suggestions for consideration by CDC.

6. What additional assistance could be provided by CDC to assist grantees in developing and disseminating accurate, effective HIV/AIDS prevention educational materials that are well-supported by the communities served?

Dated: December 14, 1992.

Walter R. Dowdle,

Acting Director, Centers for Disease Control and Prevention (CDC).

Following are the interim revisions, as published on June 15, 1992:

Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers For Disease Control Assistance Programs—Interim Revisions June 1992

1. Basic Principles

Controlling the spread of HIV infection and AIDS requires the promotion of individual behaviors that eliminate or reduce the risk of acquiring and spreading the virus. Messages must be provided to the public that emphasize the ways by which individuals can fully protect themselves from acquiring the virus. These methods include abstinence from the illegal use of IV drugs and from sexual intercourse except in a mutually monogamous relationship with an uninfected partner. For those individuals who do not or cannot cease risky behavior, methods of reducing their risk of acquiring or spreading the virus must also be communicated. Such messages can be controversial. These principles are intended to provide guidance for the development and use of educational materials, and to require the establishment of Program Review Panels to consider the appropriateness of messages designed to communicate with various groups.

a. Written materials (e.g., pamphlets, brochures, fliers), audiovisual materials (e.g., motion pictures and video tapes), and pictorials (e.g., posters and similar educational materials using photographs, slides, drawings, or paintings) should use terms, descriptors, or displays necessary for the intended audience to understand dangerous behaviors and explain less risky practices concerning HIV transmission.

b. Written materials, audiovisual materials, and pictorials should be reviewed by Program Review Panels consistent with the provisions of section 2500(b), (c), and (d) of the Public Health Service Act, 42 U.S.C. section 300ee(b), (c), and (d), as follows:

"SEC. 2500. USE OF FUNDS.

(b) Contents of Programs.—All programs of education and information receiving funds under this title shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and

the benefits of abstaining from such activities.

(c) Limitation.—None of the funds appropriated to carry out this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

(d) Construction.—Subsection (c) may not be constructed to restrict the ability of an education program that includes the information required in subsection (b) to provide accurate information about various means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene."

c. Educational sessions should not include activities in which attendees participate in sexually suggestive physical contact or actual sexual practices.

d. Messages provided to young people in schools and in other settings should be guided by the principles contained in "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR 1988;37 [suppl. no. S-2]).

2. Program Review Panel

a. Each recipient will be required to establish or identify a Program Review Panel to review and approve all written materials, pictorials, audiovisuals, questionnaires or survey instruments, and proposed educational group session activities to be used under the project plan. This requirement applies regardless of whether the applicant plans to conduct the total program activities or plans to have part of them conducted through other organization(s) and whether program activities involve creating unique materials or using/distributing modified or intact materials already developed by others. Whenever feasible, CDC funded community-based organizations are encouraged to use a Program Review Panel established by a health department or an other CDC-funded organization rather than establish their own panel. The Surgeon General's Report on Acquired Immune Deficiency Syndrome (October 1986) and CDC-developed materials do not need to be reviewed by the panel unless such review is deemed appropriate by the recipient. Members of a Program Review Panel should:

(1) Understand how HIV is and is not transmitted; and

(2) Understand the epidemiology and extent of the HIV/AIDS problem in the local population and the specific audiences for which materials are intended.

b. The Program Review Panel will be guided by the CDC Basic Principles (in the previous section) in conducting such reviews. The panel is authorized to review materials only and is not empowered either to evaluate the proposal as a whole or to replace any other internal review panel or procedure of the recipient organization or local governmental jurisdiction.

c. Applicants for CDC assistance will be required to include in their applications the following:

(1) Identification of a panel of no less than five persons which represent a reasonable cross-section of the general population. Since Program Review Panels review materials for many intended audiences, no single intended audience shall predominate the composition of the Program Review Panel, except as provided in subsection (d) below. In addition:

(a) Panels which review materials intended for a specific audience should draw upon the expertise of individuals who can represent cultural sensitivities and language of the intended audience either through representation on the panels or as consultants to the panels.

(b) The composition of Program Review Panels, except for panels reviewing materials for school-based populations, must include an employee of a state or local health department with appropriate expertise in the area under consideration who is designated by the health department to represent the department on the panel. If such an employee is not available, an individual with appropriate expertise, designated by the health department to represent the agency in this matter, must serve as a member of the panel.

(c) Panels which review materials for use with school-based populations should include representatives of groups such as teachers, school administrators, parents, and students.

(d) Panels reviewing materials intended for racial and ethnic minority populations must comply with the terms of (a), (b), and (c), above. However, membership of the Program Review Panel may be drawn predominately from such racial and ethnic populations.

(2) A letter or memorandum from the proposed project director, countersigned by a responsible business official, which includes:

(a) Concurrence with this guidance and assurance that its provisions will be observed;

(b) The identity of proposed members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the panel.

d. CDC-funded organizations that undertake program plans in other than school-based populations which are national, regional (multistate), or statewide in scope, or that plan to distribute materials as described above to other organizations on a national, regional, or statewide basis, must establish a single Program Review Panel to fulfill this requirement. Such national/regional/state panels must include as a member an employee of a state or local health department, or an appropriate designated representative of such department, consistent with the provisions of section 2.c.(1). Materials reviewed by such a single (national, regional, or state) Program Review Panel do not need to be reviewed locally unless such review is deemed appropriate by the local organization planning to use or distribute the materials. Such national/regional/state organization must adopt a national/regional/statewide standard when applying Basic Principles 1.a. and 1.b.

e. When a cooperative agreement/grant is awarded, the recipient will:

(1) Convene the Program Review Panel and present for its assessment copies of written materials, pictorials, and audiovisuals proposed to be used;

(2) Provide for assessment by the Program Review Panel text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals which are under development;

(3) Prior to expenditure of funds related to the ultimate program use of these materials, assure that its project files contain a statement(s) signed by the Program Review Panel specifying the vote for approval or disapproval for each proposed item submitted to the panel; and

(4) Provide to CDC in regular progress reports signed statement(s) of the chairperson of the Program Review Panel specifying the vote for approval or disapproval for each proposed item that is subject to this guidance.

[FR Doc. 92-30702 Filed 12-17-92; 8:45 am]
BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and

Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Arthritis Advisory Committee Subcommittee

Date, time, and place. January 5, 1993, 8:30 a.m., Conference rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; closed committee deliberations, 9:30 a.m. to 5 p.m.; Isaac F Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3741.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 23, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to a pending investigational new drug application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 14, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92-30721 Filed 12-17-92; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Announcement of Proposed Methodology for Implementation of the Statutory General Funding Preference for Selected Grant Programs Under Titles VII and VIII of the Public Health Service Act for Fiscal Year 1993

SUMMARY: The Health Professionals Education Extension Amendments of 1992 and the Nurse Education and Practice Improvement Amendments of 1992 (Pub. L. 102-408, dated October 13, 1992) amend the Public Health Service Act (the Act) to include a general funding preference (sections 791(a) and 860(e)) for selected grant programs. For the purpose of making grant and cooperative agreement awards, funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications. This notice will describe the proposed methodology for implementation of the general funding preference authorized by sections 791(a) and 860(e).

EFFECTIVE DATE: The methodology for implementing the statutory general funding preference is proposed for use in fiscal year (FY) 1993 grant cycles for the programs which are subject to this funding preference. Public comments are invited on the proposed FY 1993 methodology for implementing this statutory general funding preference and will be considered prior to the publication of the final notice.

SUPPLEMENTARY INFORMATION: Sections 791(a) and 860(e) of the Act include a general funding preference for selected grant programs under titles VII and VIII. Grant programs which are subject to this funding preference are:

Department of Family Medicine (section 747(b)),
Grants for Graduate Training in Family Medicine (section 747(a)),
** Grants for Faculty Development in Family Medicine (section 747(a)),
* Grants for Predoctoral Training in General Internal Medicine and/or General Pediatrics Predoctoral Training (section 748),
Grants for Residency Training in General Internal Medicine and/or General Pediatrics (section 748),
** Grants for Faculty Development in General Internal Medicine and/or General Pediatrics (section 748),
Residency Training and Advanced Education in the General Practice of Dentistry (section 749),
* Grants for Physician Assistant Training Program (section 750),
* Podiatric Primary Care Residency Training (section 751),
* Grants for Preventive Medicine Residency Training (section 763),
* Allied Health Traineeships (section 766),
Allied Health Project Grants (section 767),
* Advanced Nurse Education (section 821),
Nurse Practitioner and Nurse Midwife Education and Traineeships (section 822),
Professional Nurse Traineeships (section 830),
Nurse Anesthetist Education Programs (section 831(a)),
Nurse Anesthetist Traineeships (section 831(a)), and
Grants for Nurse Anesthetist Faculty Fellowships (section 831(b)).

Statutory General Funding Preference Provision

Under sections 791(a) and 860(e) of the Act, with respect to the above listed grant programs, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Preference will be given only for applications ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group.

Statutory Definition of "Graduate"

Under sections 791(c) and 860(e)(3), "graduate" is defined as an individual who has successfully completed all training (and residency requirements) necessary for full certification in the health profession selected by the individual.

Additional details concerning the definition of the word "graduate" will be included in the program materials for the grant programs which are subject to the general funding preference.

Proposed Methodology for Implementation

The methodology for implementing this statutory general funding preference includes (1) the definition of terms including "high rate," "significant increase in the rate," and "medically underserved communities," (2) a system of providing access to lists of work settings which are recognized as medically underserved areas, and (3) a system of ranking applications when multiple funding preferences are used.

To qualify for this funding preference, an applicant must meet the criteria for either part (A) or part (B) of the statutory provision cited above and be ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group. Information submitted to apply for this statutory funding preference will be subject to the normal monitoring and Federal audit processes.

Proposed Definitions of "High Rate" and "Significant Increase in Rate"

Ideally, the definitions of "high rate" and "significant increase in rate" might vary according to different patterns of practice for individual health professions disciplines. However, for fiscal year 1993 grant cycles, detailed and systematized data on which to base precise discipline-specific standards do not exist. Pending collection of more data through public comment, grant applications, or other means, the following definitions are proposed.

"High rate" is defined as 20 percent of graduates in academic year 1990-91 or academic year 1991-92, whichever is greater, who spend at least 50 percent of their worktime in clinical practice in the specified settings.

"Significant increase in the rate" means that, between academic years 1990-91 and 1991-92, the rate of placing graduates in the specified settings has increased by at least 50 percent and that not less than 10 percent of graduates are working in these settings.

Applications for the development of new programs should provide information about the placement of graduates from the entire school in medically underserved areas. For

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* There will be no competitive grant cycles in FY 1993.

** For these programs focused on the development of faculty members to teach, a method of implementing the intent of this preference will be developed in FY 1993 to be implemented in FY 1994.

example, an application for a new program for nurse practitioners should provide information relative to the placement of graduates from the school of nursing.

The statutory preference for Allied Health Project grants in section 767(b)(2)(B) provides a precedent for the use of 20 percent to define "high rate" of placing graduates in medically underserved communities. With respect to "significant increase in the rate," an increase of 50 percent in the placement of graduates with at least 10 percent placed in these settings is intended to be an achievable goal, while emphasizing provision of substantial care in medically underserved areas.

Statutory Definition of "Medically Underserved Community"

Section 799(6) of the Act defines "medically underserved community" as an urban or rural area or population that—

(A) Is eligible for designation under section 332 as a health professional shortage area;

(B) Is eligible to be served by a migrant health center under section 329, a community health center under section 330, a grantee under section 340 (relating to homeless individuals), or a grantee under section 340A (relating to residents of public housing); or

(C) Has a shortage of personal health services, as determined under criteria issued by the Secretary under section 1861(aa)(2) of the Social Security Act (relating to rural health clinics).

Proposed Amplification of "Medically Underserved Community" Definition

In addition to the definition in the law, the Congressional conferees emphasized in the Statement of Managers for Public Law 102–408, that this definition should encompass not only currently designated health professions shortage areas (HPSA) and populations served by existing community (CHC), migrant (MHC) or homeless health centers but also communities and practice sites which may fit the standards for these designations, but which are not, in fact, so designated. Therefore, in implementing this funding preference for fiscal year 1993, a "medically underserved community" is proposed to include the following work settings:

Community Health Centers (section 330)
Migrant Health Centers (section 329)
Health Care for the Homeless Grantees (section 340)
Public Housing Primary Care Grantees (section 340A)
Rural Health Clinics, federally designated (section 1861(aa)(2) of the Social Security Act)
National Health Service Corps sites, freestanding (section 333)
Indian Health Service Sites (Pub. L. 93–638 for tribally operated sites and Pub. L. 94–437 for IHS operated sites)
Federally Qualified Health Centers (section 1905 (a) and (l) of the Social Security Act)
Primary Medical Care Health Professional Shortage Areas (HPSAs) (facilities and geographic) (designated under section 332) for primary care physicians and other health personnel except dentists and nurses
Dental HPSAs (facilities and geographic) (designated under section 332) for dentists only
Nurse Shortage Areas (section 836) for nurses only
Local Health Departments (regardless of sponsor—for example, local health departments who are funded by the state would qualify).

This list of work settings was developed to be objective, reasonable, practical, consistent with current definitions/usages and consistent with the law and report language (Conference Report for Public Law 102–408). There are other practice sites that serve medically underserved communities but are not included in this proposed FY 1993 implementation of the statutory funding preference. Information about such sites and suggestions of ways to categorize or define these sites for possible inclusion in FY 1994 are solicited.

Access to the Lists of Medically Underserved Work Settings

The above listed sites are proposed because medically underserved locations have been identified and compiled into listings by recognized Federal units. Beginning January 1, 1993, a listing of Community Health Centers, Migrant Health Centers, Health Care for the Homeless Grantees, Public Housing Primary Care Grantees, Rural Health Clinics, National Health Service Corps Sites, Indian Health Service Sites, and Federally Qualified Health Centers will be available through an electronic bulletin board, called the BHPr (Bureau of Health Professions) Bulletin Board. Data will be available in two formats, as a dBASE III file or as an ASCII file. The BHPr Bulletin Board can be accessed by using a personal computer with a communication package and a modem by dialing (301) 443–3997. Detailed instructions for how to proceed will appear on the screen as soon as access to the Bulletin Board is complete. Applicants who do not have the necessary equipment to access the electronic bulletin board may obtain additional information by calling the Program Official identified in the application materials for the grant programs subject to this statutory funding preference.

A list of designated Primary Medical Care Health Professional Shortage Areas (HPSAs) was published in the **Federal Register** on October 28, 1992 (57 FR 48854). For additional information concerning the Primary Medical Care Health Professional Shortage Areas (HPSAs), Dental HPSAs, and Nurse Shortage Areas, applicants may call the Division of Shortage Designation at (301) 443–6932.

For additional information concerning Local Health Departments, applicants may call the National Association of County Health Officers (NACHO) at (202) 783–5550.

Ranking Applications When Multiple Funding Preferences Are Used

Grant programs which are subject to the statutory general funding preference, under sections 791(a) and 860(e) of the Act, may also include another statutory funding preference and/or nonstatutory, administratively determined funding preferences. For grant programs that include multiple funding preferences, it is proposed that preference points be assigned. An application would receive one point for qualifying for a statutory funding preference and one half point for qualifying for each administrative preference, but no applicant qualifying only for an administratively determined preference would be funded ahead of an applicant qualifying for a statutory funding preference. The total number of preference points for any grant program will equal the number of statutory preferences plus half the number of administrative preferences. The preference points will (1) provide equitable treatment of applicants which qualify for more than one preference, (2) recognize that statutory funding preferences should have the most weight, and (3) give appropriate credit for administratively determined preferences.

Continued Development of Methodology

The proposed implementation methodology is intended to be a starting point in an evolutionary process. Ultimately, definitions of "high rate" and "significant increase in the rate" may be individualized for specific grant programs or for specific health professions as more data are available from public comments and specific data collection efforts. The list of acceptable

work settings may also be refined and/or expanded in the future. Changes based on public comment will be considered for fiscal year 1993 or may be implemented in future program cycles. Comments from the public are encouraged to assist in refining the methodology for implementing this funding preference. Specific efforts will be undertaken to solicit comments from affected constituency groups and institutions. For example, relevant applicants will be provided with a copy of the **Federal Register** notice and are encouraged to comment. In addition, relevant applicants will be asked to describe their methodology for obtaining information about graduates and to provide suggestions for future approaches. The goal is to attain an implementation system that adheres to the Statute and Congressional intent, and is objective and achievable without undue burden on the applicant.

Additional Information

Interested persons are invited to comment on the proposed implementation methodology. The comment period is 30 days. All comments received on or before January 19, 1993 will be considered before the final implementation methodology for fiscal year 1993 is established. No funds for competitive grants will be awarded until a final notice is published. Written comments should be addressed to: Ms. Shirley Johnson, Director, Office of Program Development, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8A-55, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying in the Office of Program Development, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Dated: December 14, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-30678 Filed 12-17-92; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, December 4, 1992.

(Call PHS Reports Clearance Officer on 202-690-7100 for copies of requests)

1. National Nosocomial Infections Surveillance System (NNIS)—0920-0012—The NNIS system collects data to describe the scope and magnitude of the nosocomial infection problem in the U.S., identifies risk factors associated with these infections and assists hospitals to use surveillance data to improve the quality of patient care. *Respondents:* Businesses or other for-profit; *Number of Respondents:* 165; *Number of Responses per Respondent:* 1600; *Average Burden Per Response:* 0.012 hours; *Estimated Annual Burden:* 3160 hours.

2. Farm Family Health & Hazard Surveillance in Ohio—New—This submission is for a survey of Ohio farm operators and eligible family members who are involved in cash grain farming. Data will determine prevalence and incidence of health conditions and injuries by farm demographics. The data will be used to set priorities and to develop intervention strategies in specific subpopulations in order to reduce health and safety risks in them. *Respondents:* Individuals or households; *Number of Respondents:* 6762; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .998 hours; *Estimated Annual Burden:* 6747 hours.

3. Indian Health Service Loan Repayment Program—0917-0014—Respondents are American Indian Loan Repayment Health professionals applying to the Indian Health Service (IHS) Loan Repayment Program (LRP). The application provides information on training status in compliance with program requirements. *Respondents:* Individual or households, State or local governments, businesses or other for profit.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Applicants	1,200	1	1.5
Leaders	1,600	1	0.25
Estimated Total annual Burden			2,200

Desk Officer: Shannah Koss

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: December 14, 1992.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 92-30697 Filed 12-17-92; 8:45 am]

BILLING CODE 4160-17-M

Health Resources and Services Administration; Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a new system of records: 09-15-0058, "Faculty Loan Repayment Program, HHS/HRSA/BHPr."

DATES: PHS invites interested parties to submit comments on or before January 19, 1993. PHS has sent a Report of A New System to the Congress and to the Office of Management and Budget (OMB) on December 8, 1992. The new system will be effective 60 days from the date submitted to OMB unless PHS receives comments which would result in a contrary determination.

ADDRESSES: Please address comments to the Health Resources and Services Administration (HRSA) Privacy Act Coordinator, Department of Health and Human Services, Parklawn Building, Room 14A-20, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3780. This is not a tool-free number.

FOR FURTHER INFORMATION CONTACT: Director, Division of Disadvantaged Assistance BHPr/HRSA, Room 8A09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2100. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Health Resources and Services Administration (HRSA) proposes to establish a new system of records: 09–15–0058, "Faculty Loan Repayment Program, HHS/HRSA/BHPr." Under this program, disadvantaged graduates from certain health professions schools are offered the opportunity to enter into a contractual agreement with the Secretary under which the Public Health Services agrees to repay a specified amount of their graduate loan indebtedness. In exchange, the graduate health professional agrees to have contract with an accredited health professions school to serve as a fulltime faculty member for a minimum of 2 years.

The purposes of the records maintained in this system are to: (1) Maintain all information relative to the application for the awarding of a contract to an individual; (2) monitor recipient's continued eligibility; (3) monitor recipient's employment with the accredited health professions school; (4) monitor all repayment actions until the repayment obligation is satisfied; and (5) compile and generate managerial and statistical reports.

HRSA will permit disclosure of the records to third parties pursuant to a routine use as follows: The first routine use permits disclosure to a congressional office, to allow subject individuals to obtain assistance from their representatives in Congress, if they so desire. The second routine use allows disclosure to the Department of Justice or a court, in the event of litigation. The third routine use allows disclosure to a consumer reporting agency (credit bureau) to obtain a commercial credit report. The fourth routine use allows disclosure to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt. The fifth routine use allows disclosure to authorized persons employed at educational institutions to assist in identifying defaulted contract recipients. The sixth routine use allows disclosure to a Federal, State or local agency charged with the responsibility of investigating or prosecuting violations or potential violations of law. The seventh routine use allows disclosure to another Federal agency so that the agency can effect a salary offset, or an authorized administrative offset. The eighth routine use allows disclosure to the General Accounting Office and the Office of Management and Budget for auditing financial obligations. The ninth routine use allows disclosure to another agency that has asked the Department to effect an administrative offset to help collect a debt owed to the United States. The tenth routine use allows disclosure to the Treasury Department, Internal Revenue Service, of the written-off amount of a debt owed by an individual to the Federal Government as taxable income. The eleventh routine use allows disclosure to a third party for the purpose of obtaining the current address.

Because the payments made by the Federal Government to individuals under the program are taxable income and require HHS to file Form 1099 for each participating individual, participants will be required to furnish their Social Security number as required by the Internal Revenue Code (26 U.S.C. 6109(c)(2)).

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after it becomes effective.

Dated: December 10, 1992.

Wilford J. Forbush,

Director, Office of Management.

09–15–0058

SYSTEM NAME:

Faculty Loan Repayment Program, HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8A09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for and receipients of contracts under the Faculty Loan Repayment Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contain name, Social Security number, school identifier, contract number, birthdate, demographic background, educational status, school location, employment status, payback status, and financial information about the individual for whom the record is maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, as amended, section 761 (42 U.S.C. 294cc). This section authorizes the establishment of a program for entering into contract with individuals from disadvantaged backgrounds for repayment of educational loans in exchange for teaching services.

PURPOSES:

1. To maintain all information relative to the application for awarding a contract to an individual.
2. To monitor recipient's continued eligibility.
3. To monitor recipient's employment in fulfillment of recipient's service obligation.
4. To monitor all repayment actions until the repayment obligation is satisfied.
5. To compile and generate managerial and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual, in responses to an inquiry from the congressional office made at the request of the individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof, where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in such care HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. HRSA may disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect or compromise a Federal debt, information necessary to identify a delinquent debtor. Disclosure will be limited to the debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

4. Records may be disclosed to authorized persons employed at educational institutions where the recipient received a loan. The purpose of this disclosure is to assist institutions in identifying defaulted loan recipients (hereafter called debtors) in order to enforce the conditions and terms of such loans.

5. In the event that system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

6. HRSA may disclose from this system of records a debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows: (a) To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset; (b) to another Federal agency so that agency can effect an authorized administrative offset (i.e., withhold money payable to or held on behalf of debtors other than Federal employees); (c) to the Treasury Department, Internal Revenue Service (IRS), to request a debtor's current mailing address to locate him/her for purposes of either collecting or compromising debt, or to have a commercial credit report prepared.

7. Records may be disclosed to the General Accounting Office and to the Office of Management and Budget for auditing financial obligations to determine compliance with programmatic, statutory, and regulatory provisions.

8. HRSA may disclose information from this system of records to another Federal agency that has asked the Department to effect an administrative offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to identify the individual; information about the money payable to or held for the individual, and other information concerning the administrative offset.

9. HRSA will report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible, either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

10. HRSA may disclose information from this system of record to any third party that may have information about a delinquent debtor's current address, such as a U.S. post office, a State motor vehicle administration, professional organization, alumni association, etc., for the purpose of obtaining the debtor's current address. This disclosure will be strictly limited to information necessary to identify the individual without any reference to the reason for the agency's need for obtaining the address.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of disclosure is to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Disclosure of records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on magnetic tape, microfilm, and/or in disk packs.

RETRIEVABILITY:

Retrieval will be by name and/or Social Security number.

SAFEGUARDS:

1. Authorized Users: Administrative and staff personnel of the Division of Disadvantaged Assistance and other components of the HRSA.

2. Physical Safeguards: Magnetic tapes, microfilms, disk packs, computer equipment, and hard copy files are stored in areas where fire and life safety codes are strictly enforced. Twenty-four hours, 7-day security guards perform random checks on the physical security of the data. All documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. Procedural and Technical Safeguards: A password is required to access the terminal, and a software security system controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised area. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual; and the Department's Information Systems Security Handbook.

RETENTION AND DISPOSAL:

Records will be retained for 6 years (1 year on site and 5 years at the National Records Center) after completion of the service obligation or repayment to the Secretary in cases of default. Records on magnetic tape are retained for 5 years and then they are destroyed. Records are disposed of in accordance with the Records Control Schedule of the Health Resources and Services Administration. Contact the System Manager for disposal standard.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, room 8A09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

Requests must be made to the System Manager.

Requests in person: A subject individual who appears in person at a specific location seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. Additional identification may be requested when there is a request for access to records which contain in apparent discrepancy between information contained in the records and that provided by the individual requesting access to the

records. No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests by mail: Requests for information and/or access to records received by mail must contain information providing the identity of the writer and a reasonable description of the record desired. Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified above and reasonably identify the record, specify the information being contested, and state the corrective action and the reason(s) for requesting the correction, along with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual contract recipients, recipient's school.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92-30730 Filed 12-17-92; 8:45 am]

BILLING CODE 4160-15

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on Friday, November 20, 1992. (Call Reports Clearance Officer on (410) 965-4142 for copies of package)

1. Statement of Death by Funeral Director—0960-0142. The information on form SSA-721 is used by the Social Security Administration (SSA) to make timely and accurate decisions in connection with the death of an individual and to determine if there are survivors who may be eligible for Social Security benefits.

Number of Respondents: 900,000
Frequency of Response: 1
Average Burden Per Response: 3.5 minutes
Estimated Annual Burden: 52,500 hours

2. Disability Report—0906-0141. The information on form SSA-3368 is used by SSA to help make a determination of disability on a claim for benefits. The respondents are applicants who have filed for disability benefits under titles II or XVI.

Number of Respondents: 1,800,000
Frequency of Response: 1
Average Burden Per Response: 45 minutes
Estimated Annual Burden: 1,350,000

3. Medical History and Disability Report—0960-0504. The information on form SSA-3820 is used by SSA to help make a disability determination in claims for disabled child's benefits. The respondents are claimants for those benefits.

Number of Respondents: 453,000
Frequency of Response: 1
Average Burden Per Response: 20 minutes
Estimated Annual Burden: 151,500 hours.

OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: December 8, 1992.

Nicholas E. Tagliareni,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92-30266 Filed 12-17-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-92-3551]

Notice of Submission of Proposed Information Collections to OMB

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 9, 1992.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Proposal: Actions to Reduce Losses in FHA Programs (FR-2491).

Office: Housing.

Description of the Need for the Information and its Proposed Use: This information collection requires a mortgagee, when notified by the FHA Commissioner, that the mortgage had a higher than normal rate of serious defaults and claims in the processing year to submit a report to the Commissioner and, if applicable, a plan and a timetable for corrective action.

Form Number: None.

Respondents: Individuals or households, businesses or other for-profit, non-profit institutions and small businesses or organization.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	200		1		40		8,000

Total Estimated Burden Hours: 8,000.

Status: Extension.

Contact: Andrew Zirneklis, HUD, (202) 708–1824, Angela Antonelli, OMB, (202) 395–6880.

Dated: December 9, 1992.

Proposal: Section 8 Housing Assistance Program for the Disposition/ HUD-owned Projects, Section 8 Housing Assistance Payments (HAP) Contract (Part II).

Office: Housing.

Description of the Need for the Information and its Proposed Use: The HAP Contract, Part II, form HUD–52522–D, is the legal document used to obligate Federal funds and to commit the owner to HUD regulations and necessary procedural requirements governing the purpose and use of these funds.

Form Number: HUD–52522–D.

Respondents: Individuals or households, State or local governments, businesses or other for-project and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	860		1		30.1244		25,907

Total Estimated Burden Hours: 25,907.

Status: New.

Contact: R. K. Weldon, HUD, (202) 708–3944, Angela Antonelli, OMB, (202) 395–6880.

Dated: December 9, 1992.

[FR Doc. 92–30707 Filed 12–17–92; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–92–3552]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 8, 1992.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Request for Construction Change.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This information is used by contractors, mortgagors, and mortgagees to obtain approval of changes in the contract drawings and specifications. HUD will use the information to make sure they are complying with Article 1F of the Construction Contract.

Form Number: HUD–92437, 92441, 92442 and 92442A.

Respondents: Businesses or Other For-Profit, Federal Agencies or Employees, Non-Profit Institutions and Small Businesses or Organization.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Request for Construction change	500		20		3		30,000

Total Estimated burden Hours: 30,000.

Status: Extension.

Contact: Felix Coward, HUD, (202) 708–0743. Angela Antonelli, OMB, (202) 395–6880.

Dated: December 8, 1992.

Proposal: Section 8 Housing Assistance Payments Program, Additional Assistance Program for Project with HUD–Held Mortgages, 24 CFR part 886, subpart A Housing Assistance Payments (HAP)

Office: Housing.

Description of the Need for the Information and its Proposed Use: Owners or managing agents of certain categories of HUD-Insured or HUD-held project mortgages with immediate or potentially serious financial difficulties apply for assistance under 24 CFR Part 886, Subpart A. These contracts provide the administrative mechanism to obligate the necessary funds for the financially troubled projects or the renewal of existing HAP contracts.

Form Number: HUD–52530 and 53527.

Respondents: Individual or Households, State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	3,126		1		7.243		22,642

Total Estimated Burden Hours: 22,642.

Status: Revision.

Contract: R.K. Weldon, HUD, (202) 708–3944. Angela Antonelli, OMB, (202) 395–6880.

Dated: December 8, 1992.

Proposal: Request for Alternative Construction ("No Action Letter") 24 CFR 3282.14 Alternative Construction of Manufactured Homes.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The Department will use this information to allow manufactured to build homes using construction methods other than those required by the National Manufactured Home Construction and Safety Standards established by the Secretary. It will also assure that home purchasers are aware of any use of alternative construction methods.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	11		1		32.66		359

Total Estimated Burden Hours: 359.

Status: Extension.

Contact: Philip Schulte, HUD, (202) 708–1920. Angela Antonelli, OMB, (202) 395–6880.

Dated: December 8, 1992.

Proposal: Agreement to Avoid Judgment.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–56145 is used by HUD Field Office personnel to obtain payments due the Government in the case of a claim for reimbursement for loss on an eligible title I loan.

Form Number: HUD–56145.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–56145	1,258		1		1		1,258

Total Estimated Burden Hours: 1,258.

Status: New.

Contact: Annie Baird-Bridges, HUD, (202) 708–5880. Angela Antonelli, OMB, (202) 395–6880.

Dated: December 8, 1992.

Proposal: Requirements for Single Family Mortgage Instruments Model/ Adjustable Rate Note Form.

Office: Housing.

Description of the Need for the Information and its Proposed Use: As the insurer for single family mortgages, HUD must ensure that the mortgage instruments have provisions that are compatible with the Department's requirements. In addition, these instruments must contain the specific provisions necessary to accomplish program objectives.

Form Number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Mortgage Instruments	8,300		90		.25		186,750

Total Estimated Burden Hours: 186,750.

Status: Extension.

Contact: Joan Morgan, HUD, (202) 708-2676. Angela Antonelli, OMB, (202) 395-6880.

Dated: December 8, 1992.

[FR Doc. 92-30708 Filed 12-17-92; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-92-3542; FR-3348-N-03]

State and Local Fair Housing Laws: Notice of Certification of Substantially Equivalent Agency—State of North Carolina

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice and request for comments.

SUMMARY: Title 24, part 115 of the Code of Federal Regulations describes the procedure for certifying State and local fair housing laws that provide substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act. In accordance with 24 CFR 115.6(c), this Notice announces the Department's determination that the fair housing law of the State of North Carolina is substantially equivalent, on its face, to the Fair Housing Act. This notice also solicits comments from the public on this determination, and on whether the present practices and past performance of the agency enforcing the fair housing law for the State of North Carolina demonstrate that, in operation, the law provides rights and remedies that are substantially equivalent to those available under the Fair Housing Act.

DATES: Comment Due Date: January 19, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Marcella O. Brown, Director, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of housing and Urban Development, 451 Seventh Street, SW, room 5234, Washington, DC 20410, telephone (202) 708-0455. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Under the Fair Housing Act (42 U.S.C. 3600-3619), the Department is authorized to investigate complaints alleging discrimination in housing. (Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 is cited as the Fair Housing Act. Section 810(f) of the Fair Housing Act requires the Department to refer complaints to State and local agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department. The certification standards are codified at 24 CFR part 115.)

On January 13, 1992 (57 FR 1277), the Department published the annual notice required by 24 CFR 115.6, which announced, among other things, the updated, consolidated list of all certified agencies, and a list of agencies with which an agreement for interim referrals or other utilization of services has been entered into under 24 CFR 115.11. In the January 13, 1992 notice, the Department listed eight jurisdictions which had entered into an agreement with the Department, subsequent to September 12, 1988, for interim referrals, and were considered to have interim certification in accordance with section 810(f)(4) of the Fair Housing Amendments Act of 1988 (hereafter "Act"). (The Fair Housing Amendments Act of 1988 was enacted on September 13, 1988.) Today's notice announces that the fair housing law of the State of North Carolina has been determined by the Assistant Secretary of Fair Housing and Equal Opportunity to be substantially equivalent on its face.

This Notice

In accordance with 24 CFR 115.6(c)(1), this Notice announces that the fair housing law of the State of North Carolina is, on its face, substantially equivalent to the Fair Housing Act. The Assistant Secretary for Fair housing and Equal Opportunity has determined, after application of the criteria set forth in 24 CFR 115.3 and 115.4, that the fair housing law for the State of North Carolina provides, on its face, substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act. Following a review of performance standards and other material, the Department expects to determine that the law in operation provides rights and remedies that are substantially equivalent to those available under the Fair housing Act. The Department intends to execute a Memorandum of Understanding with the agency charged with enforcement of the fair housing law of the State of North Carolina in accordance with 115.6(c).

In accordance with 24 CFR 115.6(b), the public is invited to submit written comments on this Notice. Specifically, the Department requests written comments on the proposed determination that the current practices and past performance of the State of North Carolina agency charged with administration and enforcement of the State' fair housing law demonstrate that, in operation, the State law provides substantive rights and remedies which are substantially equivalent to the Fair housing Act. This Notice also invites comments from the public on the Department's determination that the State of North Carolina fair housing law is, on its face, substantially equivalent to the Fair Housing Act.

Dated: December 7, 1992.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 92-30705 Filed 12-17-92; 8:45 am]

BILLING CODE 4210-28-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-3350-N-10]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* versus *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD:

(1) Its intention to make the property available for use to assist the homeless;

(2) Its intention to declare the property excess to the agency's needs; or

(3) A statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the handholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN-ZCI-P; room 1E671, Pentagon, Washington, DC 20310-2600; 693-4583; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (703) 325-0474; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; Dept. of Veterans Affairs: Douglas Shinn, Management Analyst, Dept. of Veterans Affairs, room 414 Lafayette Bldg., 811 Vermont Ave. NW., Washington, DC 20420; (202) 233-8484; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366-4246; (These are not toll-free numbers.)

Dated: December 11, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/18/92

Suitable/Available Properties

Buildings (by State)

California

Bldg. 156, VAMC
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979230015
Status: Underutilized
Comment: Portion of 39,454 sq. ft. bldg., presence of asbestos, needs rehab, seismic reinforcement deficiencies, in his. district, potentially hazardous due to nearby radioactive material.

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786-3050
Landholding Agency: Navy
Property Number: 779240011
Status: Unutilized
Comment: 7,566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 466, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786-3050
Landholding Agency: Navy
Property Number: 779240012
Status: Unutilized
Comment: 100 sq. ft., 1-story, needs rehab, most recent use—gas station, off-site use only.

Indiana

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 979230007
Status: Underutilized
Comment: 60 sq. ft., concrete block bldg., most recent sue—trash house, access restrictions.

Maine

Bldg. 332, Naval Air Station
Topsham Annex
Brunswick Co: Sagadahoc ME

Landholding Agency: Navy
Property Number: 779240013
Status: Excess
Comment: 1,248 sq. ft., 1-story, most recent use—office building, off-site use only.

Bldg. 333, Naval Air Station
Topsham Annex
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779240014
Status: Excess
Comment: 12,672 sq. ft., 2-story, most recent use—office building, off-site use only.

Oklahoma

Bldg. T-1475, Fort Sill,
Lawton Co: Comanche OK 73503-5100
Landholding Agency: Army
Property Number: 219240784
Status: Unutilized
Comment: 544 sq. ft., 1-story wood frame donkey shed, off-site use only.

Washington

Federal Building,
801 Capitol Way
Olympia Co: Thurston WA
Landholding Agency: GSA
Property Number: 549240003
Status: Excess
Comment: 13,800 sq. ft., 3-story plus basement, sandstone blocks over steel-concrete superstructure, most recent use—office space, listed on National Historic Register.
GSA Number: G-WA-1040

Vancouver Substations
Vancouver Co: Clark WA 98661—
Landholding Agency: GSA
Property Number: 549240004
Status: Excess
Comment: 7 electrical control houses and transmission line corridors, access restrictions, high voltage present, minor contamination.
GSA Number: 9-B-WA-1019-1028

Land (by State)

California

.4075 acres
Ocotillo Wells
Borrego CA
Landholding Agency: GSA
Property Number: 549230002
Status: Excess
Comment: unimproved land, surrounding land—desert.
GSA Number: 9-F-CA-1327

Oklahoma

Parcel No. 100/GSA No. 13
Lake Texoma
Section 25, T7S, R5E
Enos Co: Marshall OK
Location: 1 mile northeast of Enos
Landholding Agency: GSA
Property Number: 319010440
Status: Excess
Comment: 11.77 acres, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Parcel No. 58/GSA No. 7
Lake Texoma
Section 34 and Section 3
Co: Marshall OK
Location: About 2 miles northeast of Cumberland
Landholding Agency: GSA
Property Number: 319010460
Status: Excess
Comment: 28.66 acres, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Parcel No. 44/GSA No. 4
Lake Texoma
Section 15, T5S, R7E
Co: Johnston OK
Location: About ½ miles southeast of Bee
Landholding Agency: GSA
Property Number: 319010475
Status: Excess
Comment: 14.98 acres, no utilities, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Parcel No. 46/GSA No. 5
Lake Texoma
Section 15 and Section 16, T5S, R7E
Co: Johnston OK
Location: About 1 miles southwest of Bee
Landholding Agency: GSA
Property Number: 319010477
Status: Excess
Comment: 23.91 acres, no utilities, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Parcel No. 13/GSA No. 1
Lake Texoma
Section 7, T7S, R8E
Co: Bryan OK
Location: Approximately 2 miles south of Mead, OK.
Landholding Agency: GSA
Property Number: 319011345
Status: Excess
Comment: 26.76 acres, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Parcel No. 21/GSA No. 2
Lake Texoma
Section 3, T7S, R7E
Co: Bryan OK
Location: Approximately 5 miles southwest of Mead, OK.
Landholding Agency: GSA
Property Number: 319011352
Status: Excess
Comment: 41.16 acres, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Parcel No. 23/GSA No. 3
Lake Texoma
Section 34, T7S, R8E
Co: Bryan OK
Location: Approximately 3½ miles west of Mead, OK
Landholding Agency: GSA
Property Number: 319011354
Status: Excess
Comment: 9 acres, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Parcel No/ 68/GSA No. 10
Lake Texoma, Sect. 11 T6S, R6E
Cumberland Co: Marshall OK
Landholding Agency: GSA
Property Number: 549240010
Status: Excess
Comment: 29.76 acres, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Texas

Parcel #185/GSA No. 19
Lake Texoma
Co: Cooke TX
Location: Robert Firinash survey A-368
Landholding Agency: GSA
Property Number: 319010405
Status: Excess
Comment: 31.64 acres, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Parcel #224/GSA No. 24
Lake Texoma
Co: Grayson TX
Location: Thomas E. Hardway survey A-543
Landholding Agency: GSA
Property Number: 319010423
Status: Excess
Comment: 14.07 acres, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Parcel #226/GSA No. 25
Lake Texoma
Co: Grayson TX
Location: Shields Booke survey A-59
Landholding Agency: GSA
Property Number: 319010425
Status: Excess
Comment: 23.84 acres, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Parcel #239/GSA No. 26
Lake Texoma
Co: Grayson TX
Location: Greenberry Gate survey A-443
Landholding Agency: GSA
Property Number: 319010429
Status: Excess
Comment: 13.03 acres, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Parcel #241/GSA No. 27
Lake Texoma
Co: Grayson TX
Location: Greenberry Gates survey A-443
Landholding Agency: GSA
Property Number: 319010431
Status: Excess
Comment: 12.37 acres, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Parcel #242/GSA No. 28
Lake Texoma
Co: Grayson TX
Location: Thomas Allen survey A-25
Landholding Agency: GSA
Property Number: 319010432
Status: Excess
Comment: 11.91 acres, most recent use—recreation.
GSA Number: 7-D-OK-507-H

Suitable/Unavailable Properties

Buildings (by State)

Florida

Bldg. 24, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504—
Landholding Agency: VA
Property Number: 979230008
Status: Underutilized
Comment: Portion of 6150 sq. ft., 3 story concrete frame bldg., needs rehab, presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Bldg. 36, VAMC

10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230009
Status: Underutilized
Comment: Portion of 15,984 sq. ft., 1 story concrete frame bldg., needs rehab, presence of asbsestos, listed on Natl Register of Historic Places, access restrictions.

Bldg. 37, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230010
Status: Underutilized
Comment: Third floor of a concrete frame bldg. (13,900 sq. ft.), presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Indiana

Bldg. 24, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230005
Status: Underutilized
Comment: Portion of 4135 sq. ft. 2-story wood structure, needs major rehab, no sanitary or heating facilities, presence of asbestos, access restrictions.

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 979230006
Status: Underutilized
Comment: 310 sq. ft., 1 story stone structure, needs major rehab, no sanitary or heating facilities, access restrictions.

Pennsylvania

Bldg. 2, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 979230011
Status: Underutilized
Comment: Portion of 16,360 sq. ft. 3-story structure, most recent use—storage.

Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 979230012
Status: Underutilized
Comment: Portion of bldg. (3850 and 4360 sq. ft.), most recent use—storage.

Bldg. 27, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 979230013
Status: Underutilized
Comment: Second floor bldg. (3,410 sq. ft.)

Bldg. 103, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 979230014
Status: Underutilized
Comment: Portion of 1215 sq. ft. 2–story stone farm house, needs repair.

Land (by State)

Florida

Buffer Zone, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230016
Status: Underutilized
Comment: Approx. 20 acres, storm water retention area.

Compound, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 979230017
Status: Underutilized
Comment: Approx. 7 acres, storage compound, partially wooded.

Unsuitable Properties

Building (by State)

Hawaii

Bathhouse—Wailupe Quarters
U.S. Coast Guard
Honolulu Co: Honolulu HI 96821–
Property Number: 879240033
Status: Unutilized
Reason: Other, Secured Area.
Comment: Extensive deterioration.

Maint. Shop—Wailupe Quarters
U.S. Coast Guard
Honolulu Co: Honolulu HI 96821–
Landholding Agency: DOT
Property Number: 879240034
Status: Unutilized
Reason: Other, Secured Area.
Comment: Extensive deterioration.

Maine

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 879240035
Status: Unutilized
Reason: Other.
Comment: Extensive deterioration.

[FR Doc. 92–30492 Filed 12–17–92; 8:45 am]
BILLING CODE 4210–29–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–92–3472; FR–3155–N–03]

NOFA for Rental Voucher Program and Rental Certificate Program; Announcement of Funding Awards

AGENCY: Office of the Assistance Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Rental Voucher Program and Rental Certificate Program. The announcement contains the names and addresses of the award winners and the amount of each award.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Director, Rental Assistance Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 708–0477. The TDD number for the speech- or hearing-impaired is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to assist eligible families to pay the rent for decent, safe, and sanitary housing. The NOFA on which these awards were based identified the amount of housing assistance budget authority available for incremental rental vouchers and rental certificates for each HUD Field Office jurisdiction.

The FY 1992 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** notice published on July 29, 1992 (57 FR 33606). Applications were scored and selected for funding on the basis of selection criteria contained in that notice.

A total of $648,395,690 was awarded for 683 projects. Of this total, $189,186,615 of budget authority was committed for 5,610 rental voucher units, and $459,209,075 of budget authority was committed for 13,330 rental certificate units. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the name, address, and amount of the award, as shown in the Appendix to this announcement.

Dated: December 14, 1992.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix—NOFA for Rental Voucher Program and Rental Certificate Program

BILLING CODE 4210–33–M

SECTION 8 RENTAL VOUCHER PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
01	Arlington HA	4 Winslow St., Arlington, MA 02174	MA06-V048-008	5	244,165
01	Brookline HA	90 Longwood Ave., Brookline, MA 02146	MA06-V033-007	5	293,760
01	Cambridge HA	270 Green St., Cambridge, MA 02139	MA06-V003-013	5	326,590
01	Everett HA	92 Chelsea St., Everett, MA 02149	MA06-V027-007	5	285,355
01	Exec Off. Comm & Devel	100 Cambridge St., Boston, MA 02202	MA06-V901-035	6	260,090
01	Exec Off. Comm & Devel	100 Cambridge St., Boston, MA 02202	MA06-V901-036	13	597,035
01	Hanover HA	Town Hall, Hanover, MA 02339	MA06-V148-001	5	307,320
01	Holliston HA	492 Washington St., Holliston, MA 01746	MA06-V165-001	5	258,770
01	Lowell HA	350 Moody St., Lowell, MA 01853	MA06-V001-007	25	938,945
01	Marlborough CDA	240 Main St., Marlborough, MA 01752	MA06-V070-003	5	291,955
01	Norwood HA	40 WM Shine Circle, Norwood, MA 02062	MA06-V109-004	25	1,321,145
01	Salem HA	27 Charter St., Salem, MA 01970	MA06-V055-010	5	241,600
01	Salisbury HA	37 Beach Rd., Salisbury, MA 01953	MA06-V174-005	8	376,845
01	Stockbridge HA	Pine St., Stockbridge, MA 01262	MA06-V080-001	12	356,640
01	Stoughton HA	4 Capen St., Stoughton, MA 02072	MA06-V117-003	5	307,320
01	Walpole HA	8 Diamond Pond Terrace, Walpole, MA 02081	MA06-V140-001	5	268,630
01	Winchester HA	13 Westley St., Winchester, MA 01890	MA06-V125-008	25	1,253,350
01	Bridgeport HA	1 Highland Ave., Bridgeport, CT 06604	CT26-V001-014	25	984,430
01	CT Dept. of Hsg.	1179 Main St., Hartford, CT 006105	CT26-V045-009	6	305,815
01	Middletown HA	40 Broad St., Middletown, CT 06450	CT26-V009-008	25	720,685
01	Stratford HA	75 Griffen St., Stratford, CT 06497	CT26-V027-006	25	1,166,265
01	Wallingford HA	45 Tremper Dr., Wallingford, CT 06492	CT26-V025-001	20	846,110
01	Berlin HA	10 Granite St., Berlin, NH 03570	NH36-V011-004	14	360,445
01	Manchester HA	198 Hanover St., Manchester, NH 03104	NH36-V001-017	16	612,195
01	South Portland HA	P.O. Box 2128, South Portland, ME 04106	ME36-V020-006	10	413,650
01	Vermont HA	P.O. Box 397, Montpelier, VT 05602	VT36-V007-021	20	575,200
01	Vermont HA	P.O. Box 397, Montpelier, VT 05602	VT36-V007-022	12	314,275
01	Westerly HA	5 Chestnut St., Westerly, RI 02891	RI43-V008-007	22	903,510
02	New York City HA	250 Broadway, New York, NY 10007	NY36-V005-017	294	10,511,750
02	NYC-HPD	100 Gold St., New York, NY 10038	NY36-V110-009	153	5,233,855
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-V903-082	128	4,300,820
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-V903-085	20	934,645
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-V903-086	11	274,480
02	Town of Babylon Housing	P.O. Box 2791, North Babylon, NY 11703	NY36-V130-013	15	796,360
02	Town of East Hampton	159 Pantigo Rd., East Hampton, NY 11937	NY36-V154-008	16	739,830
02	Town of Hempstead DUR	200 N. Franklin St., Hempstead, NY 11550	NY36-V046-004	25	1,044,925
02	Village of Kiryas Joel HA	P.O. Box 566, Monroe, NY 10950	NY36-V158-004	8	405,665
02	Village of New Square HA	766 N. Main St., New Square, NY 10977	NY36-V138-010	10	738,675
02	Gloversville	Kingsboro Twrs, Frontage Rd., Gloversville, NY 12078	NY06-V048-005	13	241,635
02	NYSHFA-DHCR	1 Fordham Plaza, 2nd Floor, New York, NY 1045	NY06-V902-692	40	987,415

SECTION 8 RENTAL VOUCHER PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
02	NYSHFA-DHCR	1 Fordham Plaza, 2nd Floor, New York, NY 10458	NY06-V902-693	28	780,425
02	Town of Bethlehem	445 Delaware Ave., Delmar, NY 12054	NY06-V427-004	10	253,475
02	Town of Colonie	Memorial Town Hall, Newtownville, NY 12128	NY06-V408-006	12	281,030
02	Town of Greece	2505 Ridge Rd. W., Rochester, NY 14626	NY06-V444-004	10	255,950
02	Town of Rotterdam	1100 Vinewood Ave., Schenectady, NY 12306	NY06-V516-004	10	270,370
02	Village of Ballston Spa	66 Front St., Ballston Spa, NY 12020	NY06-V562-004	20	584,170
02	Village of Fairport	31 S. Main St., Fairport, NY 14450	NY06-V406-006	20	541,950
02	Bergen Co.	21 Main St., Rm. 307W, Hackensack, NJ 07601	NJ39-V067-012	22	1,174,185
02	Gloucester Co.	223 S. Evergreen Ave., Woodbury, NJ 08096	NJ39-V204-015	25	934,690
02	Morristown HA	31 Early St., Morristown, NJ 07960	NJ39-V023-001	25	1,256,175
02	Newark HA	57 Sussex Ave., Newark, NJ 07103-3992	NJ39-V002-006	11	581,480
02	NJDCA - Bergen Co.	CN-051, Trenton, NJ 078625-0051	NJ39-V087-140	8	387,470
02	NJDCA - Hunterdon Co.	CN-051, Trenton, NJ 078625-0051	NJ39-V087-144	7	321,875
02	NJDCA - Middlesex Co.	CN-051, Trenton, NJ 078625-0051	NJ39-V087-146	7	296,400
02	NJDCA - Somerset Co.	CN-051, Trenton, NJ 078625-0051	NJ39-V087-147	7	327,870
02	Orange HA	340 Thomas Blvd., Orange, NJ 07050	NJ39-V025-012	10	524,680
02	Passaic Co HA	317 Pennsylvania Ave., Paterson, NJ 07503	NJ39-V090-005	30	1,761,605
02	West New York HA	6100 Adams St., W. New York, NJ 07093	NJ39-V030-006	22	777,715
03	Dauphin Co. HA	P.O. Box 7598, 501 Mohn St., Steelton, PA 17113	PA26-V035-007	25	854,575
03	Dover HA	1266-76 Whiteoak Rd., Dover, DE 19901-3437	DE26-V002-004	12	558,000
03	Easton HA	P.O. Box 876, 222 S. 4th St., Easton, PA 18044	PA26-V024-007	25	780,995
03	Lehigh Co. HA	333 Ridge Ave., Emmaus PA 18014	PA26-V081-012	25	740,145
03	Luzerne Co. HA	250 First Ave., Kingston, PA 18704-5815	PA26-V057-015	15	415,530
03	Philadelphia HA	2012 Chestnut, Philadelphia, PA 19103	PA26-V002-013	50	2,065,715
03	Wilkes-Barre HA	Lincoln Plaza, Wilkes-Barre, PA 18702	PA26-V047-012	10	227,270
03	City of Hagerstown HA	11 W. Baltimore St., Hagerstown, MD 21741	MD06-V006-005	25	725,655
03	Harford Co. HA	15 S. Main St., Suite 106, Bel Air, MD 21014	MD06-V025-009	25	889,125
03	St. Mary's Co. HA	P.O. Box 653, Leonardtown, MD 20650	MD06-V021-010	7	233,640
03	Washington Co. HA	33 W. Washington St., Hagerstown, MD 21740	MD06-V028-007	25	673,695
03	Huntington HA	P.O. Box 2183, Huntington, WV 25722	WV15-V004-014	13	366,195
03	Parkersburg HA	1901 Cameron Ave., Parkersburg, WV 26101	WV15-V005-014	20	681,260
03	Allegheny Co. HA	341 Fourth Ave., Pittsburgh, PA 15222	PA28-V006-019	4	106,205
03	Butler Co. HA	111 S. Cliff St., Butler, PA 16003-1917	PA28-V010-006	18	538,450
03	Pittsburgh HA	200 Ross St., Pittsburgh, PA 15219	PA28-V001-016	25	612,690
03	Washington Co. HA	100 Crumrine Tower, Washington, PA 15301	PA28-V017-013	38	967,765
03	City of VA Beach	Municipal Center, Virginia Beach, VA 23456	VA36-V039-001	13	493,980
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA36-V027-032	25	583,625
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA36-V027-033	25	552,500
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA36-V027-035	11	349,145
03	Waynesboro RHA	1700 New Hope Rd., Waynesboro, VA 22908	VA36-V022-011	22	537,500

SECTION 8 RENTAL VOUCHER PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
03	Alexandria, VA RHA	600 N. Fairfax St., Alexandria, VA 22314	VA39-V004-019	22	1,125,580
03	Fairfax County DHCD	1 University Plaza, Fairfax, VA 22030	VA39-V019-015	7	282,645
03	HOC of Montgomerty Co.	10400 Detrick Ave., Kensington, MD 20895	MD39-V004-021	29	1,151,300
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA39-V027-028	10	543,690
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA39-V027-029	10	528,230
04	Georgia HFA	60 Executive Pkwy, Ste. 250, Atlanta, GA 30329	GA06-V267-038	54	1,235,220
04	HA of the City of Macon, GA	P.O. Box 4928, Macon, GA 31208	GA06-V007-014	38	939,580
04	HA of the Co. of Dekalb	P.O. Box 1627, Decatur, GA 30031	GA06-V237-017	50	1,387,090
04	Evergreen HA	P.O. Box 187, Evergreen, AL 36401	AL09-V181-003	6	141,630
04	Jacksonville HA	895 Gardenet Dr., Jacksonville, AL 36265	AL09-V139-006	10	208,975
04	Jefferson County HA	2100 Walker Chapel Rd., Fultondale, AL 35068	AL09-V086-008	14	371,830
04	Walker Co. HA	P.O. Box 607, Dora, AL 35062	AL09-V129-005	26	638,410
04	Canovanas	P.O. Box M, Canovanas, PR 00629	RQ46-V075-003	19	638,760
04	Juana Diaz	P.O. Box I, Juana Diaz, PR 00665	RQ46-V038-003	18	620,880
04	Utuado	P.O. Box 190, Utuado, PR 00761	RQ46-V033-009	14	340,130
04	Anderson HA	1335 East River St., Anderson, SC 29621	SC16-V037-010	16	295,985
04	Beaufort HA	P.O. Box 1104, Beaufort, SC 29901	SC16-V026-009	5	146,010
04	Charleston Co. HA	2106 Mt. Pleasant St., Charleston, SC 29403	SC16-V056-008	16	545,705
04	Myrtle Beach HA	P.O. Box 2468, Myrtle Beach, SC 29578	SC16-V034-010	15	355,260
04	Union HA	201 Porter St., Union, SC 29379	SC16-V019-008	5	112,530
04	Albemarle Dept. of Hsg.	P.O. Box 1367, Albemarle, NC 28002	NC19-V075-003	14	333,730
04	Brunswick Co. PHA	P.O. Box 9, Bolivia, NC 28422	NC19-V147-003	25	623,150
04	Greenville HA	P.O. Box 1426, Greenville, NC 27834	NC19-V022-012	26	493,195
04	High Point	P.O. Box 1779, High Point, NC 27261	NC19-V006-013	59	1,562,385
04	Statesville HA	433 S. Meeting St., Statesville, NC 28677	NC19-V072-013	16	475,185
04	Mississippi Reg. HA #VI	P.O. Box 8746, Jackson, MS 39284-8746	MS26-V058-054	10	330,590
04	North Delta Reg. HA	P.O. Box, 1153, Clarksdale, MS 38614	MS26-V128-014	44	1,066,080
04	City of Pompano Beach HA	P.O. Box 2006, Pompano Beach, FL 33060	FL29-V028-008	25	760,750
04	Collier Co. HA	1800 Farm Worker Way, Immokalee, FL 33934	FL29-V141-007	25	908,715
04	Fort Lauderdale HA	437 SW 4th Ave., Fort Lauderdale, FL 33315	FL29-V010-014	18	601,885
04	Lake County Section 8	315 W. Main St., Tavares, FL 32778	FL29-V016-004	2	60,695
04	Lee County HA	P.O. Box 398, Fort Myers, FL 33902	FL29-V128-006	25	728,835
04	Monroe Co. HA	240 Sombrero Rd., Marathon, FL 33050	FL29-V144-008	12	386,180
04	Plant City HA	1306 Larrick Ln., Plant City, FL 33566	FL29-V034-005	25	888,425
04	Riviera Beach HA	2014 W. 17th Ct., Riviera Beach, FL 33404	FL29-V076-007	25	783,245
04	Tallahassee HA	2940 Grady Rd., Tallahassee, FL 32312	FL29-V073-014	25	728,205
04	Crossville HA	P.O. Box 425, Crossville, TN 38557	TN37-V042-001	11	231,275
04	Knoxville's CDC	P.O. Box 3550, Knoxville, TN 37927	TN37-V003-016	19	553,470
04	Bowling Green HA	P.O. Box 430, Bowling Green, KY 42102	KY36-V171-019	25	473,350
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-V134-112	14	337,990

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FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-V134-113	8	199,650
04	Lexington-Fayette Co. HA	635 Ballard St., Lexington, KY 40508	KY36-V130-018	28	874,610
04	Metro Dev. & Hsg. Agency	P.O. Box 846, Nashville, TN 37202	TN43-V005-013	20	667,800
04	Murfreesboro HA	318 E. Lokey Ave., Murfreesboro, TN 37130	TN43-V020-006	10	293,350
04	TN Hsg. Dev. Agency	404 J. Robertson Pkwy., Nashville, TN 37243-0900	TN43-V112-053	6	172,565
04	TN Hsg. Dev. Agency	404 J. Robertson Pkwy., Nashville, TN 37243-0900	TN43-V112-054	18	376,945
04	TN Hsg. Dev. Agency	404 J. Robertson Pkwy., Nashville, TN 37243-0900	TN43-V112-055	3	54,775
05	Chicago HA	22 W. Madison St., Chicago, IL 60602	IL06-V002-019	131	5,198,760
05	Jersey Co. HA	505 Horn Dr., Jerseyville, IL 62052	IL06-V074-003	25	783,720
05	Kendall Co. HA	123 W. Hydraulic Ave., Yorkville, IL 60560	IL06-V137-001	50	2,055,600
05	Madison Co.	1609 Olive St., Collinsville, IL 62234	IL06-V015-014	25	761,400
05	Whiteside Co. HA	401 W. 18th St., Rock Falls, IL 61071	IL06-V032-004	34	1,136,500
05	Butler MHA	4110 Hamilton-Middletown Rd., Hamilton, OH 45012	OH10-V015-007	6	160,080
05	Cincinnati MHA	16 W. Central Pkwy., Cincinnati, OH 45210	OH10-V004-018	27	797,750
05	Darke MHA	1469 Dayton Rd., Greenville, OH 45331	OH10-V045-004	8	181,830
05	Dayton MHA	400 Wayne Ave., Dayton, OH 45410	OH10-V005-018	6	170,840
05	Middletown PHA	435 City Centre Plaza, Middletown, OH 45042	OH10-V065-004	6	139,105
05	Cuyahoga MHA	1441 W. 25th St., Cleveland, OH 44113	OH12-V003-030	40	1,598,800
05	Erie MHA	322 Warren St., Sandusky, OH 44870	OH12-V028-012	15	436,675
05	Trumbull MHA	1977 Niles Rd., SE, Warren, OH 44484-5197	OH12-V008-016	29	800,100
05	Cambridge MHA	1100 Maple Ct., Cambridge, OH 43725	OH16-V033-004	8	203,650
05	Meigs MHA	237 Race St., Middleport., OH 45760	OH16-V035-003	6	134,430
05	Pickaway MHA	176 Rustic Dr., Circleville, OH 43113	OH16-V059-010	9	240,235
05	Portsmouth MHA	410 Court St., Portsmouth, OH 45662	OH16-V010-022	20	724,800
05	Zanesville MHA	2746 Maple Ave., Zanesville, OH 43701	OH16-V009-013	6	153,000
05	Ann Arbor	727 Miller Ave., Ann Arbor, MI 48103	MI28-V064-012	25	921,810
05	Dearborn Hgts.	1160 Sheridan, Plymouth, MI 48170	MI28-V160-002	25	809,340
05	MSHCA	401 S. Washington Sq., Lansing, MI 48909	MI28-V150-040	9	194,180
05	MSHCA	401 S. Washington Sq., Lansing, MI 48909	MI28-V150-039	20	561,240
05	Plymouth	1160 Sheridan, Plymouth, MI 48170	MI28-V045-010	25	790,135
05	Bath Township Hsg. Comm.	14379 Webster Rd., Bath, MI 48808	MI33-V194-003	25	668,875
05	Coldwater Hsg. Comm.	60 S. Clay, Coldwater, MI 49036	MI33-V056-001	25	602,760
05	Wyoming Hsg. Comm.	2450 - 36th St., SW, Wyoming, MI 49509	MI33-V115-007	9	250,675
05	Elkhart HA	1396 Benham Ave., Elkhart, IN 46516	IN36-V026-005	18	561,960
05	Goshen HA	302 S. Fifth St., Goshen, IN 46526	IN36-V101-005	16	417,120
05	Jeffersonville HA	206 Eastern Blvd., Jeffersonville, IN 47130	IN36-V023-007	31	747,790
05	Plymouth HA	2124 Western Ave., Plymouth, IN 46563	IN36-V103-001	30	631,070
05	Eau Claire Co. HA	761 Oxford Ave., Eau Claire, WI 54703	WI39-V193-005	12	310,695
05	Oconto Co. HA	1201 Main St., Oconto, WI 54153	WI39-V262-002	20	381,690
05	Racine Co. HA	520 - 21st St., Ste. A, Racine, WI 53403	WI39-V183-014	40	1 156,840

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REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
05	Richland Co. HA	701 W. Seminary St. E, Richland Center, WI 53581	WI39-V256-004	19	399,585
05	Waukesha Co. HA	120 Corrina Blvd. S., Waukesha, WI 53186	WI39-V261-007	24	530,890
05	Austin HRA	200 First Ave., NE, Austin, MN 55912	MN46-V085-005	25	584,255
05	Dakota Co. HRA	2496 - 145th St., West, Rosemount, MN 55068	MN46-V147-017	25	911,850
05	Minneapolis PHA	1001 Washington Ave., N., Minneapolis, MN 55401	MN46-V002-014	25	937,300
05	Owatonna HRA	540 W. Hills Circle, Owatonna, MN 55060	MN46-V220-004	3	59,325
06	Amarillo PHA	P.O. Box 1971, Amarillo, TX 79186	TX21-V472-015	25	675,395
06	Garland HA	701 Clark St., Garland, TX 75040	TX21-V435-007	25	937,615
06	Lubbock HA	515 N. Zenith, Lubbock, TX 79403	TX21-V018-012	25	675,580
06	Texoma COG	10000 Grayson Dr., Denison, TX 75020-8399	TX21-V542-010	25	622,020
06	Port Arthur HA	920 DeQueen, Port Arthur, TX 77643	TX24-V034-005	40	1,297,305
06	Walker Co. HA	P.O. Box 1411, Huntsville, TX 77342-1411	TX24-V461-002	11	291,930
06	Arkadelphia HA	670 S. 6th, Arkadelphia, AR 71923	AR37-V012-005	9	161,675
06	Harrison HA	City Hall, Harrison, AR 72601	AR37-V200-007	9	208,430
06	Pulaski Co. HA	201 S. Broadway, Little Rock, AR 72201	AR37-V252-002	15	442,775
06	White River Regional HA	P.O. Box 650, Melbourne, AR 72556-0650	AR37-V197-009	25	324,000
06	Caddo Parish	501 Texas St., Shreveport, LA 71101-5409	LA48-V184-001	16	553,910
06	E. Baton Rouge Parish HA	4546 North St., Baton Rouge, LA 70806	LA48-V003-015	40	1,472,500
06	Morehouse Parish	P.O. Box 509, Bastrop, LA 71220	LA48-V258-003	12	187,135
06	Vernon Parish HA	P.O. Box 1247, Leesville, LA 71496-1247	LA48-V128-002	25	405,575
06	Cherokee Nation IHA	P.O. Box 1007, Tahlequah, OK 74465	OK56-V045-009	4	127,560
06	Cherokee Nation IHA	P.O. Box 1007, Tahlequah, OK 74465	OK56-V045-010	4	86,645
06	Chickasaw Nation IHA	P.O. Box 668, ADA, OK 74820	OK56-V047-012	5	61,825
06	Chickasaw Nation IHA	P.O. Box 668, ADA, OK 74820	OK56-V047-013	4	70,120
06	Chickasaw Nation IHA	P.O. Box 668, ADA, OK 74820	OK56-V047-015	3	66,285
06	Chickasaw Nation IHA	P.O. Box 668, ADA, OK 74820	OK56-V047-016	5	61,435
06	Chickasaw Nation IHA	P.O. Box 668, ADA, OK 74820	OK56-V047-014	4	65,980
06	Norman HA	700 N. Berry Rd., Norman, OK 73069	OK56-V139-013	14	313,795
06	OHFA	P.O. Box 26720, Oklahoma City, OK 73126-6720	OK56-V901-080	6	197,440
06	Stillwater PHA	807 S. Lowry, Stillwater, OK 74074	OK56-V146-002	6	168,220
06	Tulsa HA	P.O. Box 6369, Tulsa, OK 74148-0369	OK56-V073-015	5	165,340
06	Cameron HA	P.O. Box 5806, Brownsville, TX 78520	TX59-V509-010	35	1,195,125
06	Laredo HA	2000 San Francisco Ave., Laredo, TX 78040	TX59-V011-010	35	1,032,895
06	Zapata Co. HA	P.O. Box 99, Zapata, TX 78076	TX59-V507-002	19	378,060
06	Alamogordo HA	Box 336, Alamogordo, NM 88311-0336	NM02-V004-001	25	530,580
06	Dona Ana Co. HA	2407 W. Picacho, #A-2, Las Cruces, NM 88005	NM02-V062-006	25	662,760
06	Sante Fe Co. HA	52 Camino de Jacobo, Sante Fe, NM 87501	NM02-V050-009	15	536,055
07	Cowley Co. PHA	P.O. Box 1122, Arkansas, KS 67005	KS16-V168-006	31	675,190
07	Human Services Dept.	City Hall, 2nd Fl., 455 Main St., KS 67202	KS16-V004-012	43	1,262,395
07	Salina PHA	P.O. Box 1202, Salinas, KS 67402-1202	KS16-V038-002	5	93,375

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REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
07	Eastern Iowa RHA	P.O. Box 1140, Dubuque, IA 52004-1140	IA05-V126-017	26	608,220
07	Siouxland PHA	P.O. Box 447, Sioux City, IA 51102-0447	IA05-V136-009	10	253,200
07	Waterloo HA	215 E. 4th St., Waterloo, IA 50704	IA05-V050-018	22	642,665
07	Central Nebraska Joint HA	P.O. Box 509, Loup City, NE 68853	NE26-V182-001	5	85,390
07	Norfolk HA	111 S. First St., Norfolk, NE 68701	NE26-V157-006	15	315,685
07	Omaha HA	540 S. 27th St., Omaha, NE 68105-1521	NE26-V001-023	13	375,865
07	Missouri Housing Development	301 E. Armour, Ste. 600, Kansas City, MO 64111	MO36-V920-005	25	1,005,345
07	St. Francois Co. PHA	P.O. Box N, Flat River, MO 63601-0357	MO36-V203-012	19	437,820
07	St. Louis Co. HA	8865 Natural Bridge, St. Louis, MO 63121-0580	MO36-V004-013	2	97,160
08	Archuleta Co. HA	572 E. Sixth Ave., Durango, CO 81303	CO06-V081-003	25	767,075
08	CO Div. of Housing	1313 Sherman St., Rm. 323, Denver, CO 80203	CO99-V911-022	27	938,520
08	HA City of CO Springs	P.O. Box 1575, MC340, Colorado Sprgs., CO 80903	CO99-V028-015	35	826,945
08	HA County of Salt Lake	1962 S. 200 E., Salt Lake City, UT 84115	UT99-V003-013	38	837,680
08	HA of Cass Co.	230 Eighth Ave. W., West Fargo, ND 58078	ND06-V001-007	25	635,800
09	Alameda Co. HA	29800 Mission Blvd., Hayward, CA 94544	CA39-V067-022	28	1,004,795
09	Contra Costa HA	P.O. Box 2759, Martinez, CA 94553	CA39-V011-017	30	1,494,430
09	Madera	205 N 'G' St., Madera, CA 93637	CA39-V069-008	23	675,405
09	Marin Co. HA	30 N. Pedro Rd., San Rafael, CA 94913-4282	CA39-V052-016	25	1,224,225
09	Monterey	123 Rico St., Salina, CA 93907	CA39-V033-018	25	874,745
09	Napa City HA	1115 Seminary St., Napa, CA 94559-0660	CA39-V073-007	25	1,062,355
09	Reno	1525 E. Ninth St., Reno, NV 89512	NV39-V001-016	25	1,329,670
09	San Mateo Co. HA	456 Peninsula Ave., San Mateo, CA 94401	CA39-V014-015	30	1,295,860
09	Santa Clara HA	505 W. Julian St., San Jose, CA 95110	CA39-V059-024	26	1,453,440
09	Stanislaus	1701 Robertson Rd., Modesto, CA 95352	CA39-V026-012	25	821,825
09	Honolulu City & Co.	650 S. King St., Honolulu, HI 96813	HI10-V003-018	17	1,030,855
09	Kauai Co. HA	4193 Hardy St., #1, Lihue, HI 96766	HI10-V005-011	9	510,300
09	Carlsbad	2965 Roosevelt, Ste. 700, Carlsbad, CA 92008	CA16-V077-005	25	888,610
09	Garden Grove	11400 Stanford Ave., Garden Grove, CA 92942	CA16-V102-014	25	1,377,565
09	Glendale	520 E. Broadway Ave., Ste. 302, Glendale, CA 91205	CA16-V114-016	25	995,885
09	Kern Co.	525 Roberts Ln., Bakersfield, CA 93308	CA16-V008-015	25	909,980
09	Lawndale	14717 Burin Ave., Lawndale CA 90260	CA16-V138-005	15	440,785
09	Los Angeles City	515 Columbia Ave., Los Angeles, CA 90017	CA16-V004-020	77	3,862,730
09	Los Angeles Co.	2525 Corporate Pl., Monterey Park, CA 91754	CA16-V002-015	56	2,597,945
09	Oceanside	300 N. Hill St., Oceanside, CA 92054	CA16-V132-011	25	987,465
09	Orange Co.	2043 N. Broadway, Santa Ana, CA 92706	CA16-V094-019	25	1,289,745
09	Paramount	16400 Colorado Ave., Paramount, CA 90723	CA16-V037-006	15	500,250
09	Redondo Beach	200 N. Pacific Coast Hwy., Redondo Beach, CA 90277	CA16-V103-007	25	980,700
09	San Diego Co.	3989 Ruffin Rd., San Diego, CA 92123	CA16-V108-019	25	959,480
09	San Diego Hsg. Comm.	1625 Newton St., San Diego, CA 92113	CA16-V063-017	65	2,706,800
09	San Luis Obispo	487 Leff St., San Luis Obispo, CA 93406	CA16-V064-009	12	437,510

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REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
09	Santa Barbara City	808 Laguna St., Santa Barbara, CA 93101	CA16-V076-011	25	1,034,770
09	Santa Monica	612 Colorado Ave., Santa Monica, CA 90401	CA16-V111-011	25	1,023,275
09	Torrance	3031 Torrance Blvd., Torrance, CA 90509	CA16-V121-004	25	1,061,030
09	Chandler City	99 N. Delaware, Chandler, AZ 85225	AZ20-V028-008	25	891,905
09	Mohave Co.	P.O. Box 7000, Kingman AZ 86402	AZ20-V043-003	10	357,240
09	Tempe HA	P.O. Box 5002, Temple, AZ 85280	AZ20-V031-010	11	331,210
09	Nevada Co.	10433 Willow Valley Rd., Nevada City, CA 95959	CA30-V146-002	8	259,850
09	Sacramento Co.	P.O. Box 1834, 630 I St., Sacramento, CA 95812	CA30-V007-015	30	1,314,075
09	Kodiak Island HA	2815 Woody Way, Kodiak, AK 99615-6991	AK06-V016-002	6	332,980
09	Seattle HA	120 Sixth Ave., No., Seattle, WA 98109	WA19-V001-014	41	1,699,885
09	Spokane	W. 55 Mission, Spokane, WA 99201	WA19-V055-014	25	661,240
09	Wenatchee HA	236 N. Mission St., Wenatchee, WA 98801-2004	WA19-V064-002	24	664,615
10	Siletz Indian HA	P.O. Box 549, Siletz, OR 97380	OR97-VO35-001	25	644,825
10	Coos-Curry HA	1700 Monroe St., North Bend, OR 97459	OR16-V020-005	18	593,810
10	HA of Vancouver	500 Omaha Way, Vancouver, WA 98661	OR16-V008-014	19	637,150
10	Lane County HA	177 Day Island Rd., Eugene, OR 97401	OR16-V006-021	25	868,830

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
01	Arlington HA	4 Winslow St., Arlington, MA 02174	MA06-E048-016	20	904,685
01	Brookline HA	90 Longwood Ave., Brookline, MA 02146	MA06-E033-018	20	1,077,240
01	Burlington HA	15 Birchcrest St., Burlington, MA 01803	MA06-E112-011	5	230,700
01	Cambridge HA	270 Green St., Cambridge, MA 02139	MA06-E003-023	20	1,085,340
01	Everett HA	92 Chelsea St., Everett, MA 02149	MA06-E027-016	20	1,012,440
01	Exec Off. Comm & Devel	100 Cambridge St., Boston, MA 02202	MA06-E052-166	19	811,455
01	Exec Off. Comm & Devel	100 Cambridge St., Boston, MA 02202	MA06-E052-167	11	487,390
01	Franklin County HA	80 Canal St., Turner Falls, MA 01376	MA06-E094-015	24	874,080
01	Hanover HA	Town Hall, Hanover, MA 02339	MA06-E148-004	20	1,031,220
01	Holliston HA	492 Washington St., Holliston, MA 01746	MA06-E165-004	20	1,090,860
01	Leominster HA	100 Main St., Leominster, MA 01453	MA06-E086-015	25	966,945
01	Malden HA	630 Salem St., Malden, MA 02148	MA06-E022-016	25	1,360,820
01	Marlborough CDA	240 Main St., Marlborough, MA 01752	MA06-E070-009	20	1,082,760
01	N. Attleborough HA	P.O. Box 668, N. Attleborough, MA 02760	MA06-E170-004	20	665,110
01	Pembroke HA	Kilcommons Dr., Pembroke, MA 02359	MA06-E111-008	25	1,339,740
01	Revere HA	70 Cooledge St., Revere, MA 02151	MA06-E014-021	25	1,307,040
01	Salem HA	27 Charter St., Salem, MA 01970	MA06-E055-018	20	915,185
01	Salisbury HA	37 Beach Rd., Salisbury, MA 01953	MA06-E174-003	17	770,640
01	Stockbridge HA	Pine St., Stockbridge, MA 01262	MA06-E080-005	12	306,045
01	Stoughton HA	4 Capen St., Stoughton, MA 02072	MA06-E117-006	20	1,044,840
01	Walpole HA	8 Diamond Pond Terrace, Walpole, MA 02081	MA06-E140-009	20	1,036,435
01	CT Dept. of Hsg.	1179 Main St., Hartford, CT 006105	CT26-E045-040	25	1,285,920
01	CT Dept. of Hsg.	1179 Main St., Hartford, CT 006105	CT26-E045-041	15	696,850
01	Hondon HA	P.O. Box 4051, Hondon, CT 06514	CT26-E042-011	25	1,169,200
01	Stanford HA	22 Clinton St., Stanford, CT 06904	CT26-E007-020	25	1,731,460
01	Wallingford HA	45 Tremper Dr., Wallingford, CT 06492	CT26-E067-001	25	1,141,130
01	West Hartford HA	759 Formington Ave., West Hartford, CT 06119	CT26-E039-016	10	505,210
01	West Haven HA	15 Glade St., West Haven, CT 06516	CT26-E029-016	25	1,231,260
01	Dover HA	62 Whittier St., Dover, NH 03820	NH36-E003-009	20	697,600
01	Laconia HA	25 Union Ave., Laconia, NH 03246	NH36-E007-017	19	584,870
01	Maine State HA	P.O. Box 2669, Augusta, ME 04330	ME36-E017-541	25	811,050
01	Manchester HA	198 Hanover St., Manchester, NH 03104	NH36-E001-027	10	357,450
01	NH Hsng Fin. Auth	P.O. Box 5087, Manchester, NH 03102	NH36-E019-203	10	368,760
01	NH Hsng Fin. Auth	P.O. Box 5087, Manchester, NH 03102	NH36-E019-204	10	345,460
01	Portsmouth HA	245 Middle St., Portsmouth, NH 03801	NH36-E004-007	25	1,043,700
01	South Portland HA	P.O. Box 2128, South Portland, ME 04106	ME36-E020-018	10	425,025
01	Vermont HA	P.O. Box 397, Montpelier, VT 05602	VT36-E007-218	3	82,035
01	Waterville HA	60 Elm St., Waterville, ME 04901	ME36-E008-017	25	656,000
01	Bristol HA	P.O. Box 535, Bristol, RI 02809	RI43-E019-018	25	894,500
01	Johnston HA	8 Forand Circle, Johnston, RI 02919	RI43-E009-016	25	944,585

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
01	Warren HA	20 Libby Ln., Warren, RI 02885	RI43-E022-022	9	333,730
02	New Rochelle MHA	50 Sickles Ave., New Rochelle, NY 10801	NY36-E088-010	29	1,311,795
02	New York City HA	250 Broadway, New York, NY 10007	NY36-E005-036	844	30,662,515
02	NYC-HPD	100 Gold St., New York, NY 10038	NY36-E110-019	417	15,343,375
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-E108-116	43	1,510,420
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-E108-119	58	2,922,580
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-E108-120	14	386,695
02	NYS-DHCR	1 Fordham Plaza, Bronx, NY 10458	NY36-E108-122	7	240,690
02	Port Jervis Comm Dev Ag	P.O. Box 1002, Port Jervis, NY 12771	NY36-E134-011	16	580,250
02	Town of Babylon Housing	P.O. Box 2791, North Babylon, NY 11703	NY36-E130-015	24	1,291,405
02	Town of East Hampton	159 Pantigo Rd., East Hampton, NY 11937	NY36-E154-006	13	725,615
02	Town of Hempstead DUR	200 N. Franklin St., Hemptead, NY 11550	NY36-E046-008	32	1,404,090
02	Town of Ramapo HA	Pondview Dr., Suffern, NY 10901	NY36-E084-015	29	1,764,840
02	Village of Kiryas Joel HA	P.O. Box 566, Monroe, NY 10950	NY36-E158-005	21	1,209,660
02	Village of Mamaroneck HA	154 W. Boston Post Rd., Mamaroneck, NY 10543	NY36-E101-011	25	1,035,245
02	Village of New Square HA	766 N. Main St., New Square, NY 10977	NY36-E138-013	19	1,021,200
02	Corning	7 Civic Center, Corning, NY 14830	NY06-E095-008	25	740,940
02	Fort Plain	3 Main St., Fort Plain, NY 13339	NY06-E530-011	20	548,500
02	Little Falls	550 John St., Little Falls, NY 13365	NY06-E109-008	30	689,250
02	NYSHFA-DHCR	1 Fordham Plaza, 2nd Floor, New York, NY 10458	NY06-E902-692	85	2,006,365
02	NYSHFA-DHCR	1 Fordham Plaza, 2nd Floor, New York, NY 10458	NY06-E902-693	62	1,587,325
02	Syracuse HA	516 Burt St., Syracuse, NY 13202	NY06-E001-024	3	81,680
02	Town of Clifton Park	P.O. Box 653, Clifton Park, NY 12065	NY06-E416-003	10	297,505
02	Town of Coeymans	Russell Ave., Coeymans, NY 12143	NY06-E557-008	10	288,680
02	Town of Colonie	Memorial Town Hall, Newtownville, NY 12128	NY06-E408-008	18	501,520
02	Town of Duanesburg	RD #1, Duanesburg, NY 12056	NY06-E428-002	5	142,230
02	Town of Greece	2505 Ridge Rd. W., Rochester, NY 14626	NY06-E444-006	24	608,930
02	Town of Schodack	1777 Columbia Tnpk., Castleton, NY 12033	NY06-E431-003	10	295,570
02	Town of Stillwater	P.O. Box 700, Stillwater, NY 12170	NY06-E561-008	10	302,110
02	Village of Corinth	260 Main St., Corinth, NY 12822	NY06-E538-010	20	561,610
02	Village of Deposit	Village Hall, 146 Front St., Deposit, NY 13754	NY06-E446-001	30	632,280
02	Village of Fairport	31 S. Main St., Fairport, NY 14450	NY06-E406-011	20	551,750
02	Village of Waterford	65 Broad St., Waterford, NY 12188	NY06-E630-004	10	306,060
02	Bergen Co.	21 Main St., Rm. 307W, Hackensack, NJ 07601	NJ39-E067-020	46	2,363,420
02	Highland Park HA	242 S. Sixth Ave., Highland Park, NJ 08904	NJ39-E044-006	25	1,088,995
02	Jersey City	400 US Hwy #1, Jersey City, NJ 07306	NJ39-E009-026	37	1,852,055
02	Middlesex Co. HA	303 George St., Rm 304, New Brunswick, NJ 08903	NJ39-E114-011	11	512,950
02	Monmouth Co. BOSS	P.O. Box 300, Freehold, NJ 07728	NY39-E095-021	45	1,864,350
02	Morris Co. HA	P.O. Box 900, Morristown, NJ 07963-0900	NJ39-E092-012	50	2,621,000
02	Newark HA	57 Sussex Ave., Newark, NJ 07103-3992	NJ39-E002-023	15	783,345

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
02	NJDCA – Bergen Co.	CN-051, Trenton, NJ 078625-0051	NJ39-E087-235	32	1,576,940
02	NJDCA – Camden Co.	CN-051, Trenton, NJ 078625-0051	NJ39-E087-236	20	838,925
02	NJDCA – Hunterdon Co.	CN-051, Trenton, NJ 078625-0051	NJ39-E087-239	18	860,240
02	NJDCA – Middlesex Co.	CN-051, Trenton, NJ 078625-0051	NJ39-E087-241	18	783,240
02	NJDCA – Somerset Co.	CN-051, Trenton, NJ 078625-0051	NJ39-E087-242	18	845,790
02	Orange HA	340 Thomas Blvd., Orange, NJ 07050	NJ39-E025-017	15	787,020
02	Passaic Co HA	317 Pennsylvania Ave., Paterson, NJ 07503	NJ39-E090-015	30	1,761,605
02	West New York HA	6100 Adams St., W. New York, NJ 07093	NJ39-E000-007	28	956,940
02	Woodbridge	10 Bunns Ln., Woodbridge, NJ 07095	NJ39-E033-011	25	1,031,510
03	Bradford Co. HA	4 Riverside Plaza, Bloomsburg, PA 16912	PA26-E064-013	25	706,450
03	Columbia HA	37 W. Main St., Bloomsburg, PA 17815	PA26-E083-015	25	602,780
03	Cumberland Co. HA	114 N. Hanover St., Carlisle, PA 17013-2407	PA26-E075-016	25	804,205
03	Cumberland Co. HA	114 N. Hanover St., Carlisle, PA 17013-2407	PA26-E075-017	20	608,450
03	Dover HA	1266-76 Whiteoak Rd., Dover, DE 19901-3437	DE26-E002-004	13	566,700
03	Harrisburg Co. HA	351 Chestnut St., Harrisburg, PA 17105-9713	PA26-E008-015	25	992,400
03	Lancaster City HA	333 Church St., Lancaster, PA 17602	PA26-E036-014	25	1,015,640
03	Lehigh Co. HA	333 Ridge Ave., Emmaus PA 18014	PA26-E081-020	25	703,920
03	Luzerne Co. HA	250 First Ave., Kingston, PA 18704-5815	PA26-E057-013	25	651,495
03	Philadelphia HA	2012 Chestnut, Philadelphia, PA 19103	PA26-E002-029	150	6,767,430
03	Wilkes-Barre HA	Lincoln Plaza, Wilkes-Barre, PA 18702	PA26-E047-013	15	362,330
03	Baltimore City HA	417 E. Fayette St., Baltimore, MD 21202	MD06-E002-037	35	1,354,075
03	Baltimore Co. DCD	1 Investment Pl., Suite 825, Towson, MD 21204	MD06-E033-017	70	2,194,995
03	Calvert Co. HA	420 W. Dares Beach Rd., Frederick, MD 20678	MD06-E022-002	25	1,416,875
03	City of Westminster HCDP	P.O. Box 010, Westminster, MD 21158	MD06-E027-010	25	666,375
03	St. Mary's Co. HA	P.O. Box 653, Leonardtown, MD 20650	MD06-E021-013	18	539,135
03	Charleston HA	P.O. Box 86, Charleston, WV 25321-0086	WV15-E001-018	9	119,475
03	Huntington HA	P.O. Box 2183, Huntington, WV 25722	WV15-E004-012	28	781,430
03	Mingo Co. HA	P.O. Box 2239, Williamson, WV 25661	WV15-E037-010	25	610,800
03	Morgantown HA	517 Fairmont Ave., Fairmont, WV 26554	WV15-E002-003	15	444,300
03	Parkersburg HA	1901 Cameron Ave., Parkersburg, WV 26101	WV15-E005-018	14	451,690
03	Allegheny Co. HA	341 Fourth Ave., Pittsburgh, PA 15222	PA28-E006-031	47	1,302,500
03	Altoona HA	P.O. Box 671, Altoona, PA 16603	PA28-E031-018	38	1,253,580
03	Bedford Co. HA	P.O. Box 400, Bedford, PA 15522	PA28-E085-015	25	508,725
03	Butler Co. HA	111 S. Cliff St., Butler, PA 16003-1917	PA28-E010-016	7	273,000
03	Clarion Co HA	8 W. Main St., Clarion, PA 16214	PA28-E086-016	13	307,450
03	Erie Co. HA	108 S. Center St., Corry, PA 16407	PA28-E087-012	26	874,770
03	Meadville HA	1120 Market St., Meadville, PA 16335-4356	PA28-E033-006	5	197,825
03	Pittsburgh HA	200 Ross St., Pittsburgh, PA 15219	PA28-E001-030	26	719,070
03	Big Stone Gap RHA	P.O. Box 536, Big Stone Gap, VA 24219	VA36-E038-002	14	302,085
03	Chesapeake RHA	P.O. Box 1304, Chesapeake, VA 23320	VA36-E012-017	25	793,875

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
03	City of VA Beach	Municipal Center, Virginia Beach, VA 23456	VA36-E039-001	12	471,720
03	Harrisonburg RHA	286 Kelley St., Harrisonburg, VA 22801	VA36-E014-005	25	731,815
03	Lee Co. RHA	P.O. Box 665, Jonesville, VA 24283	VA36-E034-003	25	510,710
03	Newport News RHA	P.O. Box 77, Newport News, VA 23607	VA36-E003-021	19	677,160
03	Norfolk RHA	P.O. Box 968, Norfolk, VA 23501	VA36-E006-019	25	832,875
03	Portsmouth RHA	P.O. Box 1098, Portsmouth, VA 23705	VA36-E001-011	19	669,720
03	Richmond RHA	P.O. Box 26887, Richmond, VA 23261	VA36-E007-022	25	570,525
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA36-E027-022	14	479,080
03	Alexandria, VA RHA	600 N. Fairfax St., Alexandria, VA 22314	VA39-E004-014	20	1,095,025
03	DPAH	1133 N. Capitol St., Washington, DC 20002	DC39-E001-028	8	398,400
03	Fairfax County DHCD	1 University Plaza, Fairfax, VA 22030	VA39-E019-035	18	967,665
03	HA of the City of Rockville	14 Moore Dr., Rockville, MD 20850	MD39-E007-002	50	2,979,480
03	HA Prince George Co.	9400 Peppercorn Pl., Landover, MD 20785	MD39-E015-022	40	2,438,700
03	VA Hsng. Dev. Auth.	601 S. Belvidere St., Richmond, VA 23220	VA39-E027-006	18	1,061,040
04	Georgia HFA	60 Executive Pkwy, Ste. 250, Atlanta, GA 30329	GA06-E267-053	97	2,244,975
04	HA of Savannah	P.O. Box 1179, Savannah, GA 31402-1179	GA06-E002-016	22	577,615
04	HA of the City of Americus	P.O. Box 1226, 825 N. Mayo St., Americus, GA 31709	GA06-E062-012	25	573,025
04	HA of the City of Macon, GA	P.O. Box 4928, Macon, GA 31208	GA06-E007-016	36	913,295
04	HA of the Co. of Dekalb	P.O. Box 1627, Decatur, GA 30031	GA06-E237-021	125	4,246,920
04	Birmingham HA	P.O. Box 55906, Birmingham, AL 35255	AL09-E001-017	10	293,880
04	Evergreen HA	P.O. Box 187, Evergreen, AL 36401	AL09-E181-004	18	396,210
04	Florence HA	303 N. Pine St., Florence, AL 35630	AL09-E054-012	26	553,570
04	Foley HA	302 Fourth St., Foley, AL 36535	AL09-E165-008	25	716,100
04	Guntersville HA	P.O. Box 4, Guntersville, AL 35976	AL09-E014-006	25	455,320
04	Huntsville HA	P.O. Box 486, Huntsville, AL 35804	AL09-E047-012	31	908,620
04	Lineville HA	P.O. Box 455, Lineville, AL 36266	AL09-E114-002	30	560,835
04	Prichard HA	P.O. Box 10307, Prichard, AL 36610	AL09-E169-021	20	530,610
04	Aguas Buenas	P.O. Box 128, Aguas Buenas, PR 00607	RQ46-E082-004	12	350,100
04	Cabo Rojo	P.O. Box II, Cabo Rojo, PR 00623	RQ46-E061-004	25	559,500
04	Juana Diaz	P.O. Box I, Juana Diaz, PR 00665	RQ46-E038-005	7	184,800
04	Luquillo	P.O. Box M, Luquillo, PR 00673	RQ46-E081-002	25	816,000
04	Mayaguez	P.O. Box 447, Mayaguez, PR 00709-0447	RQ46-E009-010	25	518,100
04	San Lorenzo	P.O. Box K, San Lorenzo, PR 00754	RQ46-E037-006	25	680,100
04	Utuado	P.O. Box 190, Utuado, PR 00761	RQ46-E033-006	12	279,300
04	Yauco	P.O. Box 1, Yauco, PR 00968	RQ46-E083-001	25	499,500
04	Charleston HA	20 Franklin St., Charleston, SC 29401	SC16-E001-021	13	391,215
04	Chester HA	P.O. Box 773, Chester, SC 29706	SC16-E020-007	20	424,580
04	Columbia HA	1917 Harden St., Columbia, SC 29204	SC16-E002-024	25	844,125
04	Newberry HA	P.O. Box 737, Newberry SC 29108	SC16-E035-006	40	429,560
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-104	3	58,020

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-107	3	72,240
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-109	4	84,360
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-110	3	71,555
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-111	4	101,160
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-112	2	37,920
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-113	24	835,440
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-115	5	136,440
04	SC State HA	1710 Gervais St., Columbia, SC 29201	SC16-E055-116	3	69,960
04	Albemarle Dept. of Hsg.	P.O. Box 1367, Albemarle, NC 28002	NC19-E075-006	36	809,640
04	Brunswick Co. PHA	P.O. Box 9, Bolivia, NC 28422	NC19-E147-013	15	242,445
04	Greensboro HA	P.O. Box 21287, Greensboro, NC 27420	NC19-E011-014	50	1,473,600
04	High Point	P.O. Box 1779, High Point, NC 27261	NC19-E006-014	15	353,340
04	Northwestern Regional HA	P.O. Box 2510, Boone, NC 28607	NC19-E167-014	45	1,045,955
04	Twin Rivers Opport.	P.O. Box 1482, New Bern, NC 28560	NC19-E151-009	50	1,205,650
04	Wilmington HA	P.O. Box 899, Wilmington, NC 28402	NC19-E001-009	25	597,030
04	Winston-Salem HA	901 Cleveland Ave., NE, Winston-Salem, NC 27101	NC19-E012-028	54	1,420,180
04	Mississippi Reg. HA #II	P.O. Box 1887, Oxford, MS 38655	MS26-E016-007	50	1,149,900
04	Mississippi Reg. HA #II	P.O. Box 1887, Oxford, MS 38655	MS26-E016-008	9	262,980
04	Mississippi Reg. HA #V	P.O. Box 419, Newton, MS 39345	MS26-E030-017	50	1,120,535
04	Mississippi Reg. HA #VI	P.O. Box 8746, Jackson, MS 39284-8746	MS26-E058-048	15	554,400
04	Tenessee Valley Reg. HA	P.O. Box 1329, Corinth, MS 38834	MS26-E006-033	50	579,140
04	Avon Park HA	P.O. Box 1327, Avon Park, FL 33825-1327	FL29-E012-002	25	631,450
04	Broward County HA	1773 N. State Rd. 7, Lauderhill, Fl 33313	FL29-E079-020	25	964,080
04	City of Dania	715 W. Dania Beach Blvd., Dania, FL 33004-3227	FL29-E116-006	25	970,200
04	City of Ft. Myers CRA	P.O. Drawer 2217, Fort Myers, FL 33902	FL29-E091-012	25	974,335
04	City of Kissimmee	P.O. Box 421608, Tampa, FL 34742-1608	FL29-E103-005	25	801,010
04	DeLand HA	300 Sunflower Circle, DeLand, FL 32724-5556	FL29-E072-007	25	886,595
04	Gainesville HA	P.O. Box 1468, Gainesville, FL 32602	FL29-E088-014	25	891,500
04	HA of Deerfield Beach	425 NW 1st Terr., Deerfield Beach, FL 33441	FL29-E081-005	25	966,620
04	HA of the City of Tampa	P.O. Box 4766, Tampa, FL 33607	FL29-E003-016	25	907,950
04	Hernando Co. HA	820 Kennedy Blvd., Brooksville, FL 34601	FL29-E107-009	25	795,640
04	Hialeah HA	70 E. 7th St., Hialeah, FL 33010-4465	FL29-E066-016	25	677,085
04	Hillsborough Co. HA	9260 Bay Plaza Blvd., Tampa, FL 33619-4458	FL29-E089-019	25	776,020
04	Mantee Co. HA	5631 - 11th St., E., Bradenton, FL 34203	FL29-E105-011	25	836,035
04	Monroe Co. HA	240 Sombrero Rd., Marathon, FL 33050	FL29-E144-005	13	405,560
04	Orange Co. HA	P.O. Box 1393, Orlando, FL 32801-1393	FL29-E093-012	3	108,970
04	Palm Beach Co. HA	3432 W. 45th St., West Palm Beach, FL 33407	FL29-E080-018	25	667,355
04	Panama City HA	804 E. 15th St., Panama City, FL 32405	FL29-E018-007	25	610,200
04	Pasco County HA	507 Acorn Circle, Dade City, FL 33525	FL29-E104-015	25	760,015
04	Pinellas County HA	209 S. Garden Ave., Clearwater, FL 34616	FL29-E026-023	25	716,200

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
04	Santa Rosa Co. HAPP	1498 Byrom St., Milton, FL 32570	FL29-E097-013	25	638,750
04	West Palm Beach HA	3801 Georgia Ave., West Palm Beach, FL 33405	FL29-E009-013	25	644,135
04	Crossville HA	P.O. Box 425, Crossville, TN 38557	TN37-E042-003	28	531,165
04	Knoxville's CDC	P.O. Box 3550, Knoxville, TN 37927	TN37-E003-019	51	1,380,420
04	Cumberland Valley Reg. HA	P.O. Box 806, Barbourville, KY 40906	KY36-E160-013	25	576,300
04	Jefferson Co.	300 York St., Louisville, KY 40203	KY36-E105-023	39	942,600
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-E134-098	12	265,885
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-E134-099	19	332,180
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-E134-100	19	325,670
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-E134-101	19	422,395
04	KY Housing Corp.	1231 Louisville Rd., Frankfort, KY 40601	KY36-E134-102	14	381,300
04	Lexington-Fayette Co. HA	635 Ballard St., Lexington, KY 40508	KY36-E130-017	10	266,515
04	Louisville HA	420 S. 8th, Louisville, KY 40203	KY36-E131-017	39	942,600
04	Dickson HA	333 MLK, Jr. Bldg, Dickson, TN 37055	TN43-E079-008	25	635,125
04	Metro Dev. & Hsg. Agency	P.O. Box 846, Nashville, TN 37202	TN43-E005-019	48	1,585,690
04	Murfreesboro HA	318 E. Lokey Ave., Murfreesboro, TN 37130	TN43-E020-010	5	155,990
04	TN Hsg. Dev. Agency	404 J. Robertson Pkwy., Nashville, TN 37243-0900	TN43-E112-043	8	228,045
04	TN Hsg. Dev. Agency	404 J. Robertson Pkwy., Nashville, TN 37243-0900	TN43-E112-044	20	443,650
04	TN Hsg. Dev. Agency	404 J. Robertson Pkwy., Nashville, TN 37243-0900	TN43-E112-045	7	168,005
05	Aurora HA	1630 Plum St., Aurora, IL 60506	IL06-E090-014	50	2,280,000
05	Bloomington HA	104 E. Wood St., Bloomington, IL 61701-6768	IL06-E051-010	34	1,053,300
05	Champaign HA	P.O. Box 183, Urbana, IL 61801-0183	IL06-E006-008	25	810,360
05	Chicago HA	22 W. Madison St., Chicago, IL 60602	IL06-E002-038	128	4,619,280
05	Cicero HA	2132 S. 61st Ave., Cicero, IL 60650	IL06-E130-003	25	994,200
05	City of Marion HA	501 W. DeYoung - Ste. 6, Marion, IL 62959	IL06-E126-003	15	415,200
05	Cook Co. HA	59 E. Van Buren St., Ste. 1800, Chicago, IL 60605	IL06-E025-043	169	7,978,980
05	Decatur HA	1808 E. Locust St., Decatur, IL 62521	IL06-E012-015	32	974,400
05	Marion Co. HA	719 E. Howard St., Centralia, IL 62801	IL06-E057-001	45	1,103,580
05	Mason Co. HA	200 East Hurst, Havana, IL 62644	IL06-E042-004	33	730,200
05	McHenry Co. HA	1108 N. Seminary, Woodstock, IL 61701-6768	IL06-E116-015	25	1,165,860
05	Rockford HA	330 Fifteenth Ave., Rockford, IL 61108	IL06-E022-018	25	869,640
05	Springfield HA	200 N. 11th St., Springfield, IL 62703	IL06-E004-017	25	919,500
05	Whiteside Co. HA	401 W. 18th St., Rock Falls, IL 61071	IL06-E032-006	11	345,600
05	Butler MHA	4110 Hamilton-Middletown Rd., Hamilton, OH 45012	OH10-E015-012	20	515,940
05	Cincinnati MHA	16 W. Central Pkwy., Cincinnati, OH 45210	OH10-E004-027	50	1,465,945
05	Darke MHA	1469 Dayton Rd., Greenville, OH 45331	OH10-E045-010	17	417,505
05	Dayton MHA	400 Wayne Ave., Dayton, OH 45410	OH10-E005-018	20	568,800
05	Middletown PHA	435 City Centre Plaza, Middletown, OH 45042	OH10-E065-011	20	583,250
05	Cuyahoga MHA	1441 W. 25th St., Cleveland, OH 44113	OH12-E003-043	10	360,600
05	Erie MHA	322 Warren St., Sandusky, OH 44870	OH12-E028-024	19	622,440

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
05	Lake MHA	200 W. Jackson St., Painesville, OH 44077	OH12-E025-012	68	1,860,450
05	Lorain MHA	1600 Kansas Ave., Lorain, OH 44052	OH12-E012-021	74	2,195,020
05	Portage MHA	223 W. Main, Ravenna, OH 44266-4997	OH12-E031-024	33	904,460
05	Seneca MHA	P.O. Box 1029, Mansfield, OH 44901	OH12-E075-004	16	372,605
05	Trumbull MHA	1977 Niles Rd., SE, Warren, OH 44484-5197	OH12-V008-015	25	581,250
05	Delaware MHA	P.O. Box 1292, Delaware, OH 43015	OH16-E079-003	50	1,181,970
05	Fayette MHA	101 E. East St., Washington C.H., OH 43160	OH16-E056-003	19	442,905
05	Morrow MHA	298 E. Center St., Marion, OH 43302	OH16-E083-001	19	450,435
05	Pickaway MHA	176 Rustic Dr., Circleville, OH 43113	OH16-E059-012	31	770,765
05	Portsmouth MHA	410 Court St., Portsmouth, OH 45662	OH16-E010-010	9	240,480
05	Springfield MHA	437 E. John St., Springfield, OH 45505	OH16-E021-018	14	421,140
05	Flint	3820 Richfield Rd., Flint, MI 48506	MI28-E009-016	35	838,545
05	Melvindale	3100 Oakwood St., Melvindale, MI 48122	MI28-E048-003	25	777,845
05	MSHCA	401 S. Washington Sq., Lansing, MI 48909	MI28-E150-051	22	445,815
05	MSHCA	401 S. Washington Sq., Lansing, MI 48909	MI28-E150-052	78	2,246,915
05	Port Huron	905 - 7th St., Port Huron, MI 48060-5399	MI28-E039-009	25	934,510
05	Redford Twp	12121 Hemingway, Redford, MI 48239	MI28-E141-011	25	811,925
05	Roseville	18330 Eastland, Roseville, MI 48066	MI28-E037-009	25	547,650
05	St. Clair Shs.	24700 Jefferson, St. Clair Shores, MI 48080	MI28-E059-005	25	668,500
05	Westland	32715 Dorsey, Westland, MI 48185	MI28-E139-007	25	753,855
05	Belding Hsg. Comm.	41 Belhaven, Belding, MI 48809	MI33-E025-001	25	656,305
05	Evart Hsg. Comm.	601 W. First St., Evart, MI 49631	MI33-E112-001	25	561,500
05	Jackson Hsg. Comm.	301 Steward Ave., Jackson, MI 49201	MI33-E038-003	25	734,810
05	Lansing Hsg. Comm.	310 Seymour Ave., Lansing, MI 48933	MI33-E058-010	25	737,875
05	Manistique Hsg. Comm.	400 E. Lakeshore Dr., Manistique, MI 49854	MI33-E049-003	9	155,730
05	Muskegon Hsg. Comm.	1080 Terrace St., Muskegon, MI 49442	MI33-E066-003	16	329,840
05	Wyoming Hsg. Comm.	2450 - 36th St., SW, Wyoming, MI 49509	MI33-E115-006	16	459,745
05	Columbus HA	799 McClure Rd., Columbus, IN 47201	IN36-E058-014	26	619,150
05	Goshen HA	302 S. Fifth St., Goshen, IN 46526	IN36-E101-003	25	658,905
05	Indiana DFSS	P.O. Box 6116, Indianapolis, IN 46206	IN36-E072-071	38	998,850
05	Kokoma HA	210 E. Taylor St., Kokoma, IN 46903-1207	IN36-E007-015	50	1,451,040
05	Michigan City HA	621 E. Michigan Blvd., Michigan City, IN 46360	IN36-E019-006	25	667,025
05	Mt. Vernon HA	1500 Jefferson Dr., Mount Vernon, IN 47620	IN36-E037-006	44	1,159,500
05	Seymour HA	P.O. Box 822, Seymour, IN 47274	IN36-E056-010	5	155,400
05	Barron Co. HA	P.O. Box 211, Barron, WI 54812	WI39-E245-003	40	828,420
05	Brown Co. HA	100 N. Jefferson St., Green Bay, WI 54301	WI39-E186-008	25	491,080
05	Chippewa Co. HA	711 N. Bridge St., Chippewa Falls, WI 54729	WI39-E248-005	25	503,235
05	City of Eau Claire HA	203 S. Farwell St., Eau Claire, WI 54701	WI39-E207-011	25	529,315
05	Marinette Co. HA	P.O. Box 438, Waukeshee, WI 54177	WI39-E241-003	24	455,770
05	Milwaukee Co.	907 N. 10 St., Milwaukee, WI 53233	WI39-E218-018	71	2,476,860

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
05	Richland Co. HA	701 W. Seminary St. E, Richland Center, WI 53581	WI39-E256-003	24	498,565
05	West Allis CDA	7525 W. Greenfield Ave., West Allis, WI 53214	WI39-E201-013	24	585,480
05	Winnebago Co. HA	600 Merritt Ave., Oshkosh, WI 54901	WI39-E213-008	24	333,685
05	Cloquet HRA	950 - 14th St., Cloquet, MN 55720	MN46-E073-007	10	235,405
05	Metropolitan Council HRA	230 E. Fifth St., Saint Paul, MN 55101	MN46-E163-024	37	1,983,960
05	Minneapolis PHA	1001 Washington Ave., N., Minneapolis, MN 55401	MN46-E002-025	5	207,690
05	New Ulm HRA	100 N. Broadway, New Ulm, MN 56073	MN46-E128-010	25	447,135
05	Owatonna HRA	540 W. Hills Circle, Owatonna, MN 55060	MN46-E220-004	12	304,755
05	Saint Cloud HRA	619 Mall Germain, Saint Cloud, MN 56301	MN46-E038-018	25	613,350
05	Saint Paul PHA	413 Wacouta St., Saint Paul, MN 55101	MN46-E001-022	37	1,741,270
05	SE MN Multi Co. HRA	134 E. Second St., Wabasha, MN 55981	MN46-E197-014	25	482,905
06	Arlingon HA	401 W. Sanford, #2600, Arlington, TX 76011	TX16-E433-019	25	800,940
06	Fort Worth HA	P.O. Box 430, Ft. Worth, TX 76101	TX16-E004-024	120	4,127,280
06	Plano HA	1581 Avenue K, Plano, TX 75074	TX16-E128-006	25	873,025
06	Texoma COG	10000 Grayson Dr., Denison, TX 75020-8399	TX16-E542-011	11	231,900
06	Waco HA	Box 978, Waco, TX 76703	TX16-E010-019	25	588,445
06	Houston HA	601 Sawyer, Ste. 720, Houston, TX 77007	TX24-E005-023	50	1,730,400
06	Nacogdoches Co. HA	804 Jordon St., #701, Nacogdoches, TX 75961	TX24-E501-006	23	667,365
06	Port Arthur HA	920 DeQueen, Port Arthur, TX 77643	TX24-E034-011	72	2,204,880
06	Cabot HA	Box 1113, 1918 W. Main, Cabot, AR 72023	AR37-E219-007	12	278,440
06	Craighead Co. HA	600 Alpine, Jonesboro, AR 72401	AR37-E234-005	25	571,435
06	Mississippi Co. HA	808 W. Keiser, Osceola, AR 72370	AR37-E213-010	25	521,750
06	Pulaski Co. HA	201 S. Broadway, Little Rock, AR 72201	AR37-E252-011	25	833,625
06	Siloam Springs HA	P.O. Box 280, Siloam Springs, AR 72761	AR37-E163-016	9	170,935
06	White River Regional HA	P.O. Box 650, Melbourne, AR 72556-0650	AR37-E197-045	25	324,000
06	Bienville PPJ	P.O. Box 479, Arcadia, LA 71001	LA48-E241-005	25	572,700
06	Lake Charles HA	661 Dixy Dr., Lake Charles, LA 70612-1206	LA48-E004-018	25	521,400
06	New Iberia HA	457 E. Main St., Rm. 406, New Iberia, LA 70560	LA48-E165-008	11	256,685
06	Quachita PPJ	P.O. Box 3007, Monroe, LA 71210-3007	LA48-E171-012	25	609,400
06	Shreveport HA	623 Jordan St., Shreveport, LA 71101	LA48-E002-022	22	704,880
06	St. Bernard PPJ	8201 W. Judge Perez Dr., Chalmette, LA 70043	LA48-E187-005	25	894,780
06	St. Martin PPJ	P.O. Box 9, St. Martinville, LA 70582	LA48-E178-007	25	786,000
06	St. Mary PPJ	P.O. Box 972, Morgan City, LA 70381	LA48-E220-006	25	524,600
06	Terrebonne PPJ	P.O. Box 2768, Houma, LA 70361	LA48-E211-011	50	1,464,000
06	Cherokee Nation IHA	P.O. Box 1007, Tahlequah, OK 74465	OK56-E045-033	11	358,800
06	Cherokee Nation IHA	P.O. Box 1007, Tahlequah, OK 74465	OK56-E045-034	20	405,895
06	Chickasaw Nation IHA	P.O. Box 668, ADA, OK 74820	OK56-E047-031	5	82,875
06	Norman HA	700 N. Berry Rd., Norman, OK 73069	OK56-E139-010	34	789,620
06	Oklahoma City PHA	1700 NE 4th St., Oklahoma City, OK 73117	OK56-E002-019	21	649,530
06	Stillwater PHA	807 S. Lowry, Stillwater, OK 74074	OK56-E146-011	39	838,325

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
06	Tulsa HA	P.O. Box 6369, Tulsa, OK 74148-0369	OK56-E073-027	5	177,965
06	Alice HA	P.O. Box 1407, Alice, TX 78333	TX59-E178-008	25	613,850
06	Brownsville HA	P.O. Box 4420, Brownsville, TX 78523	TX59-E007-022	50	1,288,800
06	Cameron HA	P.O. Box 5806, Brownsville, TX 78520	TX59-E509-014	50	1,536,300
06	San Antonio HA	P.O. Drawer 1300, San Antonio, TX 78295	TX59-E006-027	44	1,539,540
06	Uvalde HA	1700 Garner Field Rd., Uvalde, TX 78801	TX59-E421-009	13	248,980
06	Albuquerque Hsg Serv.	Box 25064, Albuquerque, NM 87125	NM02-E001-016	25	765,540
06	Bernallilo Co. Hsg. Dept.	620 Lomas NW, Albuquerque, NM 87102	NM02-E057-011	25	887,460
06	Las Cruces HA	926 S. San Pedro St., Las Cruces, NM 88001	NM02-E003-013	25	675,665
06	Region V HA	Box 3015, Silver City, NM 88062	NM02-E067-023	38	991,320
06	Region VI HA	Box 2303, Roswell, NM 88202-2303	NM02-E063-012	25	700,800
06	Rio Arriba Co. HA	Box 310, Espanola, NM 87532	NM02-E039-001	25	527,120
06	San Miguel Co. HA	San Miguel Co. Courthouse, Las Vegas, NM 87701	NM02-E061-003	15	408,600
07	Dodge City PHA	407 E. Bend, KS 67801	KS16-E006-003	31	734,605
07	Human Services Dept.	City Hall, 2nd Fl., 455 Main St., KS 67202	KS16-E004-012	12	332,485
07	Johnson Co. PHA	9307 W. 74th St., Merriam KS 66203	KS16-E162-005	25	739,020
07	Manhattan PHA	P.O. Box 1024, Manhattan, KS 66502	KS16-E063-009	25	620,790
07	MO. Hsg. Dev. Commission	301 E. Armour, Ste. 600, Kansas City, MO 64111	MO16-E195-007	25	743,160
07	Salina PHA	P.O. Box 1202, Salinas, KS 67402-1202	KS16-E038-007	20	395,925
07	Topeka HA	1312 Polk St., Topeka, KS 66612	KS16-E002-020	25	632,385
07	Weston PHA	256A Main St., Weston, MO 64098-1249	MO16-E193-004	25	658,700
07	Eastern Iowa RHA	P.O. Box 1140, Dubuque, IA 52004-1140	IA05-E126-036	10	250,055
07	NWIRHA	1812 24th Ave., West Spencer, IA 51301-0704	IA05-E129-018	49	971,380
07	Region VI	1500 E. Linn St., Marshalltown, IA 50158	IA05-E138-003	25	606,855
07	Sioux City HA	P.O. Box 447, Sioux City, IA 51102	IA05-E018-015	30	694,710
07	Siouxland PHA	P.O. Box 447, Sioux City, IA 51102-0447	IA05-E136-005	5	131,460
07	Waterloo HA	215 E. 4th St., Waterloo, IA 50704	IA05-E050-010	28	894,840
07	Central Nebraska Joint HA	P.O. Box 509, Loup City, NE 68853	NE26-E182-001	20	304,775
07	Lincoln HA	P.O. Box 5327, 5700 R St., Lincoln, NE 68505	NE26-E002-023	17	562,850
07	Norfolk HA	111 S. First St., Norfolk, NE 68701	NE26-E157-003	10	232,670
07	Omaha HA	540 S. 27th St., Omaha, NE 68105-1521	NE26-E001-024	12	361,855
07	Stromsburg HA	517 E. 7th St., Stromsburg, NE 68666	NE26-E017-001	16	376,465
07	Boone County PHA	807 B N. Providence Rd., Columbia, MO 65201	MO36-E198-035	25	712,200
07	Lincoln Co. HA	P.O. Box 470, Bowling Green, MO 63334-0470	MO36-E199-041	25	590,570
07	Lincoln Co. HA	P.O. Box 470, Bowling Green, MO 63334-0470	MO36-E199-042	45	1,544,100
07	Phelps Co. PHA	101 W. 10th St., Rolla, MO 65401-3299	MO36-E206-018	12	287,645
07	St. Francois Co. PHA	P.O. Box N, Flat River, MO 63601-0357	MO36-E203-033	6	119,435
07	St. Louis Co. HA	8865 Natural Bridge, St. Louis, MO 63121-0580	MO36-E004-028	17	456,085
08	Cedar City HA	P.O. Box 1721, Cedar City, UT 84721	UT99-E031-003	30	877,800
08	CO Dept. of Institutions	4131 S. Julian Way, Denver, CO 80236	CO99-E074-037	25	436,015

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
08	CO Dept. of Institutions	4131 S. Julian Way, Denver, CO 80236	CO99-E074-038	10	209,250
08	CO Div. of Housing	1313 Sherman St., Rm. 323, Denver, CO 80203	CO99-E093-019	24	875,460
08	Fort Collins HA	1715 W. Mountain Ave., Ft. Collins, CO 80521	CO99-E041-016	25	942,300
08	HA of Fountain City	501 E. Iowa Ave., Fountain, CO 80817	CO99-E071-010	38	1,349,280
08	Larimer Co. HA	1525 Blue Spruce Dr., Ft. Collins, CO 80524	CO99-E103-003	35	1,224,585
08	Provo City HA	650 W. 100 North, Provo, UT 84601	UT99-E007-013	25	625,150
08	St. George HA	975 N. 1725 W., #101, St. George, UT 84770	UT99-E021-005	30	1,009,760
08	Utah Paiute IHA	600 N. 100 E., Cedar City, UT 84720	UT99-E010-004	30	914,920
08	West Valley City HA	3600 Constitution Blvd., West Valley City, UT 84119	UT99-E025-006	38	1,081,760
09	Alameda Co. HA	29800 Mission Blvd., Hayward, CA 94544	CA39-E067-028	27	1,171,050
09	Contra Costa HA	P.O. Box 2759, Martinez, CA 94553	CA39-E011-031	66	3,245,015
09	Humboldt	735 W. Everding St., Eureka, CA 95501	CA39-E086-015	45	1,516,630
09	Marin Co. HA	30 N. Pedro Rd., San Rafael, CA 94913-4282	CA39-E052-024	48	2,577,960
09	Monterey	123 Rico St., Salina, CA 93907	CA39-E033-027	28	1,022,755
09	Oakland	1619 Harrison St., Oakland, CA 94612	CA39-E003-035	42	1,785,495
09	Reno	1525 E. Ninth St., Reno, NV 89512	NV39-E001-023	25	1,224,000
09	San Mateo Co. HA	456 Peninsula Ave., San Mateo, CA 94401	CA39-E014-022	98	6,097,790
09	Santa Clara HA	505 W. Julian St., San Jose, CA 95110	CA39-E059-031	92	5,128,225
09	Santa Rosa	P.O. Box. 1806, Santa Rosa, CA 95402	CA39-E088-021	25	922,150
09	Stanislaus	1701 Robertson Rd., Modesto, CA 95352	CA39-E026-023	98	2,819,350
09	Honolulu City & Co.	650 S. King St., Honolulu, HI 96813	HI10-E003-023	50	2,536,240
09	Kauai Co. HA	4193 Hardy St., #1, Lihue, HI 96766	HI10-E005-013	23	1,162,945
09	Anaheim HA	300 S. Harbor Blvd., Anaheim, CA 92805	CA16-E104-028	13	698,710
09	Baldwin Park	14403 E. Pacific Ave., Baldwin Park, CA 91706	CA16-E120-014	25	1,271,765
09	CA Hsg. & Comm. DEv.	1800 3rd St., Suite 450, Sacramento, CA 95814	CA16-E112-070	10	291,625
09	CA Hsg. & Comm. Dev.	1800 3rd St., Suite 450, Sacramento, CA 95814	CA16-E112-072	25	1,125,300
09	Garden Grove	11400 Stanford Ave., Garden Grove, CA 92942	CA16-E102-026	25	1,375,825
09	Glendale	520 E. Broadway Ave., Ste. 302, Glendale, CA 91205	CA16-E114-018	25	1,083,390
09	Kern Co.	525 Roberts Ln., Bakersfield, CA 93308	CA16-E008-022	25	998,580
09	Lawndale	14717 Burin Ave., Lawndale CA 90260	CA16-E138-004	25	1,033,630
09	Los Angeles City	515 Columbia Ave., Los Angeles, CA 90017	CA16-E004-038	303	16,343,960
09	Los Angeles Co.	2525 Corporate Pl., Monterey Park, CA 91754	CA16-E002-042	290	10,822,060
09	Oceanside	300 N. Hill St., Oceanside, CA 92054	CA16-E132-013	25	932,990
09	Orange Co.	2043 N. Broadway, Santa Ana, CA 92706	CA16-E094-036	25	1,577,875
09	Paramount	16400 Colorado Ave., Paramount, CA 90723	CA16-E137-004	25	811,250
09	San Diego Co.	3989 Ruffin Rd., San Diego, CA 92123	CA16-E108-030	114	4,445,090
09	San Diego Hsg. Comm.	1625 Newton St., San Diego, CA 92113	CA16-E063-034	93	4,015,410
09	San Luis Obispo	487 Leff St., San Luis Obispo, CA 93406	CA16-E044-025	19	710,175
09	Santa Ana	500 W. Santa Ana Blvd., Santa Ana, CA 92707	CA16-E093-025	25	1,555,070
09	Santa Monica	612 Colorado Ave., Santa Monica, CA 90401	CA16-E111-019	25	997,655

SECTION 8 RENTAL CERTIFICATE PROGRAM
FAIR SHARE/INCREMENTAL FUNDING DECISIONS

REGION	PHA NAME	PHA ADDRESS	PROJECT NO.	NO. OF UNITS	AMOUNT APPROVED
09	Santa Paula	P.O. Box 404, Santa Paula, CA 93060	CA16-E075-016	25	1,008,820
09	South Gate	8650 California Ave., Southgate, CA 90280	CA16-E119-011	25	945,525
09	Upland	1228 Campus, Upland, CA 91786	CA16-E009-013	25	946,200
09	Ventura Co.	99 N. Glenn Dr., Camarillo, CA 93010	CA16-E092-026	25	1,193,530
09	Gila Co.	1400 E. Ash, Globe, AZ 85501	AZ20-E045-003	16	457,740
09	Mesa HA	415 N. Pasadena, Mesa, AZ 85201	AZ20-E005-017	25	883,850
09	Mohave Co.	P.O. Box 7000, Kingman AZ 86402	AZ20-E043-003	10	359,990
09	Pima Co.	P.O. Box 27210, Tucson, AZ 85726	AZ20-E033-009	25	897,920
09	Tempe HA	P.O. Box 5002, Temple, AZ 85280	AZ20-E031-017	12	368,920
09	Tucson City	P.O. Box 27210, Tucson, AZ 85726	AZ20-E004-028	25	860,160
09	Butte Co. PHA	580 Vallombrosa Ave., Chico, CA 95926	CA30-E096-019	25	835,680
09	Nevada Co.	10433 Willow Valley Rd., Nevada City, CA 95959	CA30-E146-002	14	592,860
09	Redding City	760 Parkview Ave., Redding, CA 96001	CA30-E043-024	25	781,680
09	Shasta Co.	1670 Market St., Ste. 300, Redding, CA 96001	CA30-E048-019	25	888,360
09	Sutter Co.	448 Garden Hwy, Yuba City, CA 95992	CA30-E048-021	25	731,340
10	Kelso HA	P.O. Box 599, Kelso, WA 98626	WA19-E020-008	27	779,520
10	King Co. HA	15455 – 65th Ave., So., Seattle, WA 98188	WA19-E002-030	107	4,613,205
10	Kodiak Island HA	2815 Woody Way, Kodiak, AK 99615-6991	AK06-E016-001	15	766,855
10	Longview HA	1207 Commerce Ave., Longview, WA 98632	WA19-E007-014	29	743,980
10	Seattle HA	120 Sixth Ave., No., Seattle, WA 98109	WA19-E001-032	28	1,197,000
10	Boise City HA	680 Cunningham Pl., Boise, ID 83702	ID16-E013-017	33	1,177,215
10	HA Ada County	680 Cunningham Pl., Boise, ID 83702	ID16-E021-018	25	959,795
10	HA City of Salem	360 Church St., NE, Salem, OR 97301	OR16-E011-026	20	703,600
10	HA of Washington Co.	P.O. Box 988, Hillsboro, OR 97123	OR16-E022-023	29	868,155
10	Linn-Benton HA	1250 SE Queen Ave., Albany, OR 97321	OR16-E019-016	50	1,353,350
10	Mid-Columbia HA	506 E. Second St., The Dalles, OR 97058	OR16-E025-018	25	727,900
10	NE Oregon HA	P.O. Box 3357, LaGrande, OR 97850	OR16-E032-011	25	739,715

[FR Doc. 92-30706 Filed 12-17-92; 8:45 am]
BILLING CODE 4210-33-C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-065-03-4191-03]

Notice of Intent; Proposed Briggs Project Inyo County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management and County of Inyo will prepare a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) to assess the potential environmental impacts that may be associated with development of the proposed Briggs Project. Public scoping meetings have been scheduled in connection with the preparation of that document.

CR Briggs, a wholly owned subsidiary of Canyon Resources Corporation has filed applications with the Bureau and County for development of an open-pit, heap-leach gold mine in the Panamint Valley on the west flank of the Panamint Range in Inyo County, California. The Briggs Project is located approximately 34 miles northeast of Ridgecrest, California. The project will ultimately affect approximately 450 acres, and includes the following activities: mining, construction and operation of the heap-leach processing facility, construction and maintenance of roads, development of a water well field and pipelines, and reclamation of disturbed lands.

The EIS/EIR will be prepared by the Bureau and County with the assistance of an independent environmental consulting firm selected by the agencies. The following issues have been preliminarily identified for analysis: Water resources, vegetation and wildlife resources (including special interest species), cultural resources, recreation, visual resources, air quality, and public health and safety. In accordance with the National Environmental Policy Act and California Environmental Quality Act requirements, the EIS/EIR will also consider alternatives to the proposed action. Alternatives and additional issues may be identified as a result of the public scoping process.

Two scoping meetings are scheduled for public and agency input to determine the full scope of issues which should be addressed in the EIS/EIR. The dates, times and locations of the public meetings are as follows:

Date and Time: January 12, 1993, 7 p.m.

Location: Ridgecrest, California, Kerr McGee Center, 100 West California, Ridgecrest, CA 93555.

Date and Time: January 13, 1993, 7 p.m.

Location: Lone Pine, California, Statham Hall, 183 Jackson, Lone Pine, CA 93545.

This notice is a request for environmental information that you or your organization feels should be addressed in the EIS/EIR. Detailed information may be included in your response. Written comments should be sent to the address below no later than January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Dave Taylor, Project Manager, Bureau of Land Management, Ridgecrest Resource Area, 300 S. Richmond Rd., Ridgecrest, CA 93555, 619/375-7125.

Dated: December 10, 1992.

Joseph L. Gum,

Acting Area Manager.

[FR Doc. 92-30470 Filed 12-17-92; 8:45 am]

BILLING CODE 4310-40-M

[CO-030-03-5101-10-YCKD: COC51280]

Availability of the Record of Decision for the TransColorado Gas Transmission Project

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management has prepared the Record of Decision (ROD) for the TransColorado Gas Transmission Project in accordance with the National Environmental Policy Act of 1969, and 40 CFR part 1500. This document is now available to the public.

SUMMARY: The ROD adopts the Agency Preferred Alternative as described in the final Environmental Impact Statement (EIS) and approves issuance of a Right of Way (ROW) grant to TransColorado for the construction, operation, maintenance and eventual termination of a natural gas pipeline and associated facilities. The permanent ROW will be limited to 50 feet in width with an additional temporary work space limited to 25 feet for the majority of the length of the pipeline. In areas where visual concerns were identified the total ROW width will be limited to a maximum of 50 feet. TransColorado will be required to obtain additional temporary use permits (TUP) if Federal lands outside of the authorized ROW are to be disturbed.

The environmental protection measures contained in the EIS will be incorporated into the final Plan of Development (POD). The final POD will be completed and approved prior to issuance of any construction related Notice to Proceed.

The decision is made under the authority of the Mineral Leasing Act of 1920 as amended, the implementing regulations contained in 43 CFR parts 2800 and 2880, and the policy guidance contained in BLM Manual 2800.

The date of publication of this notice in the **Federal Register** is the start of the 30 day appeal period on the ROD.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain a copy of the ROD by writing to Chuck Finch, Project Manager, Bureau of Land Management, 2465 South Townsend Avenue, Montrose, Colorado 81401, or by calling Mr. Finch at 303-249-7791.

Dated: December 10, 1992.

Alan L. Kesterke,

District Manager.

[FR Doc. 92-30468 Filed 12-17-92; 8:45 am]

BILLING CODE 4310-JB-M

[OR-013-03-4410-03: G3-071]

Intent to Amend the Warner Lakes Management Framework Plan; Lakeview, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Opportunity for public comment; notice of intent to amend the Warner Lakes Resource Area Management Framework Plan (MFP), especially for juniper management.

SUMMARY: This notice of intent is to advise the public that the BLM Lakeview District Office intends to amend the existing planning document to address juniper management opportunities.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the 1983 Warner Lakes Resource Area MFP to address management of juniper within view of Oregon Highway 140 and in Deep, Camas, Twelvemile and Twentymile Creek Canyons. The plan amendment area covers about 13,500 acres, the majority located in the extreme southern portion of Lake County, Oregon and generally 10-20 miles east and southeast of Lakeview, Oregon. The planning area also includes 400 acres along Twelvemile Creek in Washoe County, Nevada and 10 acres in Modoc County, California that are managed by the Lakeview Resource Area.

The purpose of the amendment would be to identify alternatives which resolve concerns relating to the management of juniper in portions of the Lakeview Resource Area. Preliminary management alternatives identified to

date include: (1) Maintain present situation (No Action). (2) Juniper management to meet watershed, wildlife and riparian objectives, excluding wilderness study areas. (3) Juniper management to meet watershed, wildlife and riparian objectives, including wilderness study areas.

At the time the existing MFP was prepared, it was felt that juniper was not a serious watershed concern and that it did not affect watershed or riparian condition, so it does not accommodate significant program changes since then. In addition, it does not allow management of juniper within view of State Highway 140, nor in Deep, Camas or Twentymile Creek Canyons.

Disciplines to be represented on the interdisciplinary team preparing the plan amendment and environmental assessment are wildlife, forestry, fisheries, sensitive plants, recreation, visual resources, fuels management, watershed, range management, wilderness and land use planning.

The following preliminary issues are proposed to be addressed in the MFP Amendment: (1) What constitutes ancient juniper and what level of protection will it be afforded? (2) What actions will be taken to protect visual resources both in the long and short term? (3) Where and how much juniper should be left to provide thermal and hiding cover for resident deer herds? (4) Should juniper management be allowed within the boundary of the Fish Creek Rim Wilderness Study Area and if so at what levels? (5) What will be done to increase stream and ground cover, and reduce stream sedimentation and erosion in order to improve watershed and fish habitat condition? (6) What methods will be allowed for juniper removal and disposal? More detailed information on planning issues and criteria is available at the Lakeview District Office and has also been mailed to known interested parties.

The comment period on the preliminary issues and planning criteria for the plan amendment and associated environmental assessment will close February 1, 1993. A public meeting will be held in the Lakeview District Conference Room at 1000 South Ninth, Lakeview, Oregon from 7-9 p.m. on Tuesday, January 12, 1993. Other public participation activities will include a 45-day review of the draft plan amendment and EA, a public meeting and a tour of the plan area during the public comment period for the draft plan amendment and EA. Dates, times and locations of future meetings and document review periods will be announced through local media and mailings to interested parties. Existing planning documents and information are available at the Lakeview District Office of the BLM, 1000 South Ninth Street, P.O. Box 151, Lakeview, OR 97630 during normal working hours. Phone (503) 947-2177.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Lakeview District Office, (503) 947-2177.

Judy Ellen Nelson,

Lakeview District Manager.

[FR Doc. 92-30753 Filed 12-17-92; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-91-4320-13]

Las Vegas District Grazing Advisory Board Meeting; NV

Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Las Vegas District Grazing Advisory Board will be held Friday, January 15, 1993. The meeting will begin at 8 a.m. in the conference room of the Las Vegas District Office, 4765 W. Vegas Drive, and continue until 5 p.m..

The agenda is as follows:

1. Field trip to typical ephemeral and perennial range.
2. Introductions and discussion of what reclassification of ephemeral range means.
3. Discuss allotment by allotment reclassification results.
4. Public comments.
5. Arrangements for next meeting.

The meeting is open to the public. Interested persons may make oral comments to the board during the public comment period on the day of the meeting or they may file written statements for the board's consideration during the meeting. Notify the District Manager, BLM, 4765 West Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, if you wish to make an oral statement to the Board. Summary minutes of the board meeting will be maintained at the Las Vegas District Office. The minutes will be available for public inspection during regular office hours (7:30 a.m. to 4:15 p.m.) within 30 days after the meeting.

Ben F. Collins,

District Manager, Las Vegas.

[FR Doc. 92-30626 Filed 12-17-92; 8:45 am]

BILLING CODE 4310-HC-M

[UT-942-4210-06; U-42931 et. al.]

Proposed Continuation of Withdrawals; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that several land withdrawals for the Strawberry Valley Project and Central Utah Project, totalling 65,715.56 acres, continue for 100 years. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

DATES: Comments should be received by March 18, 1993.

ADDRESSES: Comments should be sent to State Director, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, (801) 539-4119.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawals made by Secretarial Orders dated May 6, 1905, November 16, 1905, January 30, 1906, May 13, 1907, and November 12, 1909, be continued for 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Strawberry Valley Project

U-42931

Salt Lake Meridian

T. 8 S., R. 4 E.,
Sec. 36, lots 1-8, 10-13, NW¼;
T. 9 S., R. 3 E.,
Sec. 11, lot 1;
Sec. 12, lot 3;
T. 9 S., R. 4 E.,
Sec. 1, lots 3 and 4, SE¼SE¼;
Sec. 10, N½NW¼.

U-42932, U-42934, U-42935

Uintah Special Meridian

T. 2 S., R. 11 W.,
Sec(s) 18, 19, 29, 30, 31, 32;
T. 2 S., R. 12 W.,
Sec(s) 1-3, 10-15, 22-27, 34-36;
T. 3 S., R. 11 W.,
Sec(s) 1-36;
T. 3 S., R. 12 W.,
Sec(s) 1, 2, 12, 36;
T. 4 S., R. 11 W.,
Sec(s) 1-12, 15-22, 27-32;
T. 4 S., R. 12 W.,
Sec(s) 1-3;

Central Utah Project, Bonneville Unit

U-42933

Salt Lake Meridian

T. 7 S., R. 6 E.,
Sec. 33, SE¼SE¼;
Sec. 34 S½S½;
Sec. 35, W½ (unsurveyed);
T. 8 S., R. 5 E.,
Sec. 13, NE¼, S½;
Sec. 23 NE¼NE¼, S½NE¼, SE¼SW¼, SE¼;
Sec. 24, NW¼NE¼, NW¼, NW¼SW¼;
Sec. 26, NE¼, NE¼NW¼, S½NW¼, SW¼, NW¼SE¼;

Sec. 27, NE¼SW¼, S½SW¼, SE¼;
Sec. 31, lots 2, 3, 4, NE¼, SE¼NW¼, E½SW¼, N½SE¼;
Sec. 32, N½, N½S½;
Sec. 33, NE¼, N½NW¼, SE¼NW¼, N½SW¼NW¼, E½SE¼SW¼NW¼;
Sec. 34 NW¼, NW¼NE¼;
T. 8 S., R. 6 E.,
Sec. 2, lots 9, 10, 12–14;
Sec. 3, SE¼SW¼, SE¼;
Sec. 8, SE¼SW¼, E½SE¼, SW¼SE¼;
Sec. 9, E½NE¼, SW¼NE¼, SE¼NW¼, N½SW¼, SW¼SW¼, NW¼SE¼;
Sec. 10, NW¼NE¼, N½NW¼, SW¼NW¼;
Sec. 17, N½NE¼, NW¼, N½SW¼;
Sec. 18, lots 1–3, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
T. 9 S., R. 2 E.,
Sec. 21, N½NE¼, SE¼NE¼, NE¼SE¼;
Sec. 29, SE¼NE¼, E½SE¼;

The areas described aggregate 65,715.56 acres in Utah and Wasatch Counties.

The purpose of the withdrawals is to protect Strawberry Dam and Reservoir, Soldier Creek Dam and appurtenant works. They are also needed to protect the Syar Tunnel (construction completed), the Wasatch Aqueduct and the Diamond Fork Power System (construction planned), all features of the Bonneville Unit of the Central Utah Project. The withdrawals segregate the lands from settlement, sale, location, and entry, including location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and, if so, for how long. The final determination of the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Robert Lopez,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92–30815 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–DQ–M

Bureau of Reclamation

Trinity River Basin Fish and Wildlife Task Force; Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

DATES: The meeting begins on Thursday, January 7, 1993, at 9 a.m.

ADDRESSES: The meeting will be at the Expo Inn, 1413 Howe Avenue, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Mr. Chip Bruss, Trinity River Task Force Secretary, Bureau of Reclamation, MP–720, 2800 Cottage Way, Sacramento CA 95825; telephone: (916) 978–4956.

SUPPLEMENTARY INFORMATION: The Task Force will consider Grass Valley Creek issues and the status of the proposed program extension. The meeting of the Task Force is open to the public. Any member of the public may file a written statement with the Task Force before, during, or after the meeting, in person or by mail. To the extent that time permits, the Task Force chairman may allow public presentation of oral statements at the meeting.

Dated: December 10, 1992.

Kathy E. Gordon,

Deputy Assistant Commissioner—Administration.

[FR Doc. 92–30624 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Proposed Champagne Shores Development Near Arvin, Kern County, California

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: D.L. Griffin Company of Calabasas, California, has applied for a section 10(a)(1)(B) permit PRT–768386 from the U.S. Fish and Wildlife Service (Service) for the incidental take of the Tipton kangaroo rat *(Dipodomys nitratoides nitratoides)*. A Habitat Conservation Plan (HCP) and Implementation Agreement (IA) have been submitted with the application. The proposed permit would allow incidental take for a 100-year period during construction and operation of two water ski lakes and a residential development of 20 homes on 82 acres in Kern County. The take would include the loss of approximately 25 acres of occupied habitat. To compensate for the loss of habitat, the applicant will secure 75 acres of Prime Tipton kangaroo rat habitat at a location acceptable to the Service. A management endowment and protective fencing will be provided for the compensation lands. A series of specific on-site mitigation measures will also be conducted to minimize the potential for take during construction and operation of the development. The mitigation efforts will be fully funded by the applicant. Alternatives considered include implementation of the project on alternative sites, and no project.

DATES: Written comments on the permit application, HCP, IA, and EA should be received on or before January 19, 1993.

ADDRESSES: Comments regarding the adequacy of these documents should be addressed to: Mr. Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Lehman, U.S. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, room E–1823, Sacramento, California 93710, (916) 978–4866. Individuals wishing copies of the EA, HCP, or IA for review should immediately contact the above individual.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act prohibits the "taking" of endangered species, like the Tipton kangaroo rat. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

D.L. Griffin Company (Griffin) proposes to construct and operate a water ski lake and residential development on an 82-acre parcel, which is located near the community of Arvin, in Kern County, California. The proposed development will be located within the east half of the northwest quarter of Section 1 T32S, R28E, Mount Diablo Baseline Meridian. Construction of the development will result in the permanent loss of approximately 25 acres of degraded and fragmented Tipton kangaroo rat habitat. Griffin proposes to mitigate for this incidental take via several off-site and on-site compensation and mitigation measures. Such measures include the offsite acquisition of 75 acres of prime Tipton kangaroo rat habitat, the transfer of $22,500 to the California Department of Fish and Game for a management

endowment to ensure the long-term management of the lands and various on-site mitigation measures designed to avoid "take" of listed species to the maximum extent possible during construction and operation of the development. The EA considers the environmental consequences of the proposed action, an alternative location and the no action alternative. The action requires the trapping and salvage and/or relocation of the on-site kangaroo rats. Even though the kangaroo rats are removed from the site, the potential exists trapping will miss a few. Consequently, the proposed action may result in the "take" of a small number of individual Tipton kangaroo rats. However, the action will also result in the preservation of 75 acres of prime habitat contiguous with an existing large refuge, the installation of protective fencing and the provision of funds for a long-term, management endowment, where funds for management were previously unavailable. Although the no action alternative would not result in the "take" of individual Tipton kangaroo rats, degradation of the fragmented habitat on the preferred alternative site would likely continue from outside pressures and the potential for take from wandering domestic animals, children playing, unauthorized trespassing and off-road vehicular traffic would result.

Dated: December 4, 1992.

Don Weathers,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92-30761 Filed 12-17-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Civil War Sites Advisory Commission Meeting

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice of meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on Saturday, January 30, 1992, at the Gettysburg Hotel, Eisenhower Room, One Lincoln Square, Gettysburg, Pennsylvania 17325. The meeting will begin at 9 a.m. and conclude before 3:30 p.m.

This meeting constitutes the thirteenth meeting of the Commission. The primary focus of the meeting will be on the Commission's draft report. The Commission will welcome input from the public on the subject of Civil War site evaluation and preservation, especially as it relates to Civil War sites in Pennsylvania and surrounding states.

Space and facilities to accommodate members of the public may be limited and persons will be accommodated on a first-come, first-served basis. Anyone may file a written statement with the Commission concerning matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Ms. Jan Townsend, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-343-3936). Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in Suite 250, 800 N. Capitol St., NW., Washington, DC 20002.

Dated: December 10, 1992.

Lawrence E. Aten,

Acting Executive Director and Chief, Interagency Resources Division.

[FR Doc. 92-30689 Filed 12-17-92; 8:45 am]

BILLING CODE 4310-70-M

Maine Acadian Culture Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. app. 1 section 10), that the Maine Acadian Culture Preservation Commission will meet on Thursday, January 21, 1993.

The Committee was established pursuant to Public Law 101-543. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary with respect to the development and implementation of an interpretive program of Acadian culture in the State of Maine and the selection of sites for interpretation and preservation by means of cooperative agreements.

The meeting will convene at 7 p.m. at the Madawaska High School on 7th Avenue in Madawaska, Aroostock County, Maine. The agenda for the meeting is as follows:

1. Review and approval of the summary report of the November 19, 1992 meeting;
2. Public Involvement Subcommittee report;
3. Presentation by the Executive Director of Blackstone Valley River National Historic Corridor;
4. Report of the National Park Service planning team;
5. Opportunity for public comment;
6. Proposed agenda, place and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning these meetings may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, telephone: (207) 288-5472.

Dated: December 10, 1992.

John J. Burchill,

Acting Regional Director.

[FR Doc. 92-30687 Filed 12-17-92; 8:45 am]

BILLING CODE 4310-70-M

History Areas Committee of the National Park Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting of History Areas Committee of National Park System Advisory Board.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the History Areas Committee Of the Secretary of the Interior's National Park System Advisory Board will be held at 9 a.m. on the following date and at the following location.

DATES: January 12, 1993.

LOCATION: National Park Service Director's Conference Room 3119, Main Interior Building, 1849 C Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ben Levy, Senior Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Telephone (202) 343-8164.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the History Areas Committee of the Secretary of the Interior's national Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on February 3, 1993, of the qualifications of properties being proposed for National Historic landmark designation, and to recommend to the full Board those properties that the Committee finds meet the criteria of the National Historic Landmarks Program. The members of the History Areas Committee are:

Dr. Holly Anglin Robinson, Chairperson
Mr. F.C. Duke Zeller, Vice-Chairman
Lt. Governor Connie b. Binsfeld
Mr. Paul F. Cole
Ms. Carrel Cowan-Ricks
Dr. Stuart Kaufman
Mr. Karl A. Komatsu

Hon. Jim Smith
Judge Robert Flynn Orr, *ex officio*

The meeting will include presentations and discussions on the national historic significance and the integrity of a number of properties being nominated for National Historic Landmark designation. These nominations are:

7 properties being considered as part of the Women's History Theme Study:

Alice Austen House, New York;
Kate Chopin House, Louisiana;
Marie Webster House, Indiana;
Birdcfart Musueum and Sanctuary, Connecticut;
Philadelphia School of Design, Pennsylvania
Picottee Memorial Hospital, Nebraska; and
IDA Tarbell House, Connecticut;

8 properties relating to art or architecture:

Canterbury Shaker Village, New Hampshire;
Cobblestone Historic District, New York;
Old First Presbyterian Chruch, Tennessee;
Florence Giswold House and Museum, Connecticut;
Wharton Esherick Studio, Pennsylvania;
Principia College Historic District, Illinois;
Majestic Theater, Texas; and
Bok Tower Gardens, Lake Wales, Florida;

a site relating to westward exploration and settlement:

Beginninig Point of the Louisiana Purchase Land Survey, Arkansas;

a property relating to engineering:

St. Clair River Tunnel, Michigan;

2 individual archaeological sites:

African Burial Ground, New York; and
Brooks River Archeological District, Alaska;

and 4 archaeological properties part of the Historic Contact Theme Study:

Nauset Archaeological District, Massachusetts;
Minisink Site, Pennsylvania and New Jersey;
Wards Point, New York; and
Fort Massapeag, New York.

The Committee will also review and make recommendations on the following special resource studies:

—Georggia O'Keeffe Sites, New Mexico
—Thomas Cole House, New York

The Committee will also hear status reports on the special resource studies program for fiscal years 1993 and 1994.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Committee a written statement concerning matters to be discussed. Written statements may be submitted to Ben Levy, Manager, national Historic Landmarks Survey, History Division (418), National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

Dated: December 14, 1992.

Rowland T. Bowers,

Deputy Associate Director, Cultural Resources, National Park Service, WASO.

[FR Doc. 92–30690 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–70–M

Sudbury, Assabet and Concord Rivers Wild and Scenic Study, MA; Sudbury, Assabet and Concord Rivers Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. app 1, section 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, January 28, 1993.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System. Wayland Town Hall is located on the west side of Rte. 27, just south of the intersection of Rtes. 20 and 27 in Wayland center. From the north, take Rte. 27 south and turn right at first driveway after crossing Rte. 27. From the west, take Rte. 20 east, turn left on Rte. 27 south and take immediate right into driveway. Parking lot is behind building.

Agenda

I. Welcome and introductions—Bill Sullivan
II. Approval of minutes from 12/3/92 meeting
III. Brief statements and comments from the public
IV. Presentation—Existing laws and regulations affecting recreation on the study rivers
V. Subcommittee Reports—Subcommittee Chairs
  A. River Conservation Planning Subcommittee
  B. Water Resources Subcommittee
  C. Public Participation Subcommittee
VI. Discussion—Issues of Local Concern
VII. Opportunity for public questions and comments
VIII. Other Business
  A. Next meeting dates and locations

Dated: December 10, 1992.

John J. Burchill,

Acting Regional Director.

[FR Doc. 92–30686 Filed 12–17–92; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–345]

Certain Anisotropically Etched One Megabit and Greater Drams, Components Thereof, and Products Containing Such Drams; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 13, 1992, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Micron Semiconductor Inc., 2805 East Columbia Road, Boise, Idaho 83706–9698. A supplement to the complaint was filed on December 3, 1992. The complaint, as supplemented, alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain anisotropically etched one megabit and greater dynamic random access memories ("DRAMs"), components thereof, and products containing such DRAMs, alleged to be manufactured abroad by a process covered by claims 1, 2, 5, and 6 of U.S. Letters Patent 4,436,584, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas L. Jarvis, Esq., Office of Unfair Importation Investigations, U.S. International Trade Commission, telephone 202–205–2568.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the

Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on December 11, 1992, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain anisotropically etched one megabit or greater DRAMs, components thereof, or products containing such DRAMs, by reason of alleged infringement of claims 1, 2, 5, or 6 of U.S. Letters Patent 4,436,584, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Micron Semiconductor Inc., 2805 East Columbia Road, Boise, Idaho 83706–9698.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hyundai Electronics Industries Co., Ltd., San 136–1, Ami-Ri, Bubal-Myun, Ichon-Ku, Kyungki-Do, Korea

Hyundai Electronics America, Inc., 4401 Great America Parkway, Santa Clara, California 95054

Goldstar Electron Co., Ltd., 16, Woomyeon-Dong, Seocho-Gu, Seoul, Korea

Goldstar Electron America, Inc., 3003 North First Street, San Jose, California 95134.

(c) Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., room 401–J, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: December 14, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–30676 Filed 12–17–92; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701–TA–319–332, 334, 336–342, 344, and 347–353 (Final)]

Certain Flat-Rolled Carbon Steel Products From Austria, Belgium, Brazil, France, Germany, Italy, Korea, Mexico, New Zealand, Spain, Sweden, and the United Kingdom; Institution of Final Countervailing Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution of final countervailing duty investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigations Nos. 701–TA–319–332, 334, 336–342, 344, and 347–353 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain flat-rolled carbon steel products (as indicated in the table below), provided for in headings/subheadings 7208, 7209, 7210.31, 7210.39, 7210.41, 7210.49, 7210.60, 7210.70, 7210.90, 7211, 7212.21, 7212.29, 7212.30, 7212.40, 7212.50, and 7212.60 of the Harmonized Tariff Schedule of the Untied States, that the U.S. Department of Commerce (Commerce) has preliminarily found to have been subsidized by the Governments of the following countries:

Country	Cut-to-length plate	Hot-rolled sheet and strip	Cold-rolled sheet and strip	Corrosion-resistant sheet
Austria			701–TA–336	
Belgium	701–TA–319	701–TA–329	701–TA–337	
Brazil	701–TA–320	701–TA–330	701–TA–338	701–TA–347
France	701–TA–321	701–TA–331	701–TA–339	701–TA–348
Germany	701–TA–322	701–TA–332	701–TA–340	701–TA–349
Italy	701–TA–323		701–TA–341	
Korea	701–TA–324	701–TA–334	701–TA–342	701–TA–350
Mexico	701–TA–325			701–TA–351
New Zealand				701–TA–352
Spain	701–TA–326		701–TA–344	
Sweden	701–TA–327			701–TA–353
United Kingdom	701–TA–328			

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), Commerce has extended the date for its final determinations to coincide with those to be made in the ongoing antidumping investigations on certain carbon steel flat-rolled products from the above-listed countries and, in addition, has extended the date for its final determination on corrosion-resistant carbon steel flat-rolled products from

New Zealand to coincide with the final determinations in other investigations on those products. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigations until Commerce makes preliminary determinations in the antidumping investigations (currently scheduled for January 26, 1993).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 7, 1992.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce, under section 703 of the Act (19 U.S.C. 1671b), that certain benefits constituting subsidies are being provided to manufacturers, procedures, or exporters in Austria, Belgium, Brazil, France, Germany, Italy, Korea, Mexico, New Zealand, Spain, Sweden, and the United Kingdom of certain carbon steel flat-rolled products (cut-to-length plate, hot-rolled sheet and strip, cold-rolled sheet and strip, and/or corrosion-resistant sheet and strip). The investigations were requested in a petition filed on June 30, 1992, by counsel for Armco Steel Co., L.P.; Bethlehem Steel Corp.; Geneva Steel; Gulf States Steel, Inc. of Alabama; Inland Steel Industries, Inc.; Laclede Steel Co.; LTV Steel Co., Inc.; Lukens Steel Co.; National Steel Corp.; Sharon Steel Corp.; USX Corp./U.S. Steel Group; and WCI Steel, Inc. (not all companies are petitioners in all cases).

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Identification of Competition Arguments

Persons wishing to raise arguments during these investigations that specific subject imported steel products do not compete with products of the domestic industries (i.e., "niche product" arguments) are requested to provide a written, non-business-proprietary description (including tariff classification) of each steel product in question no later than the date for filing entries of appearance. Please note that this request pertains not only to products and countries covered by Commerce's preliminary subsidy determinations but also to products and countries for which preliminary antidumping determinations are pending.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: December 16, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–30880 Filed 12–17–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

December 15, 1992.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Agway, Inc.
(2) 333 Butternut Drive, DeWitt, NY 13214
(3) 333 Butternut Drive (Mailing address: Box 4933, Syracuse, NY 13221)
(4) Larry Clark, Box 4746, Syracuse, NY 13221.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30763 Filed 12–17–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Extension of Public Comment Period on Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and Other Environmental Statutes

Notice is hereby given that the public comment period on the second proposed settlement agreement in In re National Gypsum Co., Case No. 390–37213–SAF–11 (Bankr. N.D. Tex.) is being extended through January 5, 1993. This extension is due to a change in the Bankruptcy Court's confirmation

hearing schedule. For a summary of the proposed settlement agreement and a description of where copies may be obtained, please refer to the notice published at 57 FR 56,374 (Nov. 27, 1992).

The Department of Justice will receive comments relating to the proposed settlement agreement through January 5, 1993. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should specifically refer to In re National Gypsum Co., D.J. reference #90-11-2-689.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-30681 Filed 12-17-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s). New General Wage Determination

Volume I

Indiana:	
IN91-17 (Dec. 18, 1992).	p. All.
Kentucky:	
KY91-29 (Feb. 22, 1991).	p. All.
New York:	
NY91-11 (Feb. 22, 1991).	p. All.
Pennsylvania:	
PA91-4 (Feb. 22, 1991).	p. All.
PA91-7 (Feb. 22, 1991).	p. All.
PA91-31 (Feb. 22, 1991).	p. All.
West Virginia:	
WV91-3 (Feb. 22, 1991).	p. 1445, pp. 1446-1458b.

Volume II

Indiana:	
IN91-16 (Feb. 22, 1991).	p. All.
Michigan:	
MI91-2 (Feb. 22, 1991).	p. All.
Wisconsin:	
WI91-8 (Feb. 22, 1991).	p. All.
WI91-10 (Feb. 22, 1991).	p. All.
WI91-19 (Feb. 22, 1991).	p. All.

Volume III

Colorado:	
CO91-1 (Feb. 22, 1991).	p. 151, p. 152.
CO91-2 (Feb. 22, 1991).	p. All.
CO91-3 (Feb. 22, 1991).	p. All.
CO91-4 (Feb. 22, 1991).	p. All.
CO91-6 (Feb. 22, 1991).	p. 179, p. 180.
Wyoming:	
WY91-9 (Feb. 22, 1991).	p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes,

arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 11th day of December 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-30519 Filed 12-17-92; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The Assistant Director for Engineering has determined that the renewal of the Special Emphasis Panel in Engineering Education and Centers (formerly Special Emphasis Panel in Engineering Infrastructure Development) is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Special Emphasis Panel in Engineering Education and Centers.

Purpose: To review applications to programs, progress of ongoing Engineering Research Centers and Engineering Education Coalitions, review special initiative proposals, and to advise the Division management of continuing funding.

Balanced Membership Plan: Membership will be selected on an "as needed basis in response to specific proposals/applications/sites to be reviewed. About 165 individual panelists will be used each year. Members will be selected for their technical fit and the breadth and depth of candidate members. Membership will represent industry and/or academia, small or large organizations. Consideration will also be given to achieving geographic balance and to enhancing representation for women, minority, younger and disabled scientists.

Responsible NSF officials: Dr. Sue Kemnitzer, Deputy Division Director (Education), National Science Foundation, room 1776G, Washington, DC 20550 (202) 786-9631.

Dated: December 11, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-30717 Filed 12-17-92; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Establishment

The Assistant Director for Education and Human Resources has determined that the establishment of the Advisory Panel for the Presidential Faculty Fellows activity is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Panel for Presidential Faculty Fellows.

Purpose: To provide advice and recommendations to the Director, NSF, and the President, regarding nominations to the Presidential Faculty Fellow award for support and recognition of 36 of the nation's most outstanding young faculty members working in research, education, and human resources in the areas of the physical sciences, engineering, geoscience, mathematics, biology, computer and information science, and social, behavioral, and economic sciences.

Balanced Membership Plan: Membership will consist of about 35 persons selected to be representative of the scientific and engineering areas normally supported by the Foundation. Every effort is made to achieve a balanced membership with representation including women, minority scholars, disabled persons, as well as different geographic regions of the U.S. and leaders from predominately undergraduate institutions and industry.

Responsible NSF Officials: Dr. Sonia Ortega, Program Director or Ms. Mary Saladek, Program Manager, National Science Foundation, room 1202, Washington, DC 20550 (202) 357-9466.

Dated: December 11, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-30716 Filed 12-17-92; 8:45 am]

BILLING CODE 7555-01-M

Proposed Change to Grant Policy; Request for Comments

ACTION: Notice of proposed change to National Science Foundation grant policy; request for comments.

SUMMARY: The National Science Foundation (NSF) is considering revisions to Section 517 of the NSF Grant Policy Manual, which sets forth NSF policy on payment of page charges for scientific journal publications under NSF grants. The proposed change to Section 517d of the NSF Grant Policy Manual would eliminate the present prohibition against payment of page charges to journals operated for profit. If adopted, NSF policy would no longer distinguish between journals published by profitmaking organizations and those published by scientific societies or other non-profit organizations for purposes of allowing page charges.

DATES: The NSF will welcome any comments on the proposed policy change. In order to be assured consideration comments must be postmarked no later than January 19, 1993.

ADDRESSES: Comments may be addressed to Robert B. Hardy, Acting Head of Policy, Division of Grants and Contracts, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Robert E. Hardy, 202-357-7880.

Lawrence Rudolph,

Deputy General Counsel.

[FR Doc. 92-30628 Filed 12-17-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324]

Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing; Carolina Power & Light Co., et. al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-71 and DPR-62, issued to Carolina Power & Light Company (CPL, the licensee), for operation of the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

The amendments would allow a one-time revision to the requirements of Technical Specification 3.3.3, Emergency Core Cooling System Actuation Instrumentation, when in Operational Condition 4 (Cold Shutdown) to allow the minimum number of operable channels for one reactor steam dome pressure—low instrumentation trip system to be

temporarily reduced from two (2) channels to one (1) channel. The proposed amendments would allow, on three (3) separate occasions, one (1) reactor steam dome pressure—low (injection permissive) channel to be placed in the inoperable status for up to seven (7) days without invoking the ACTION statement in order to support modifications to upgrade the seismic qualifications of instrument racks H21-P009 (Unit 2 only) and H21-P010 (Unit 1 and Unit 2).

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By January 19, 1993, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-248-5100 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated November 16, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room.

Dated at Rockville, Maryland, this 11th day of December 1992.

For the Nuclear Regulatory Commission.

Stephen T. Hoffman,

Acting Director, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-30724 Filed 12-17-92; 8:45 am]

BILLING CODE 7590-01-M

GE Nuclear Energy Receipt of Application for Design Certification

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application from GE Nuclear Energy (GE) dated August 27, 1992, filed pursuant to section 103 of the Atomic Energy Act and 10 CFR part 52, for design certification of the Simplified Boiling Water Reactor (SBWR) Standard Plant Design. A notice relating to the rulemaking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be published in the future.

The SBWR is a 670 MWe boiling water reactor in which passive safety systems are used for the ultimate safety protection of the plant. All of the safety systems are designed to be passive, where natural forces, such as gravity, natural convection, and stored energy (in the form of compressed gas or batteries), are used as the motive forces of these systems. The SBWR has a number of unique features that distinguish it from both the current generation of light water reactors and the evolutionary light water reactors. The SBWR application includes the entire power generation complex, except those elements and features considered site-specific, and is not a modular design in which major components are shared.

The application is incomplete in several important respects, and cannot, therefore, be accepted formally as a rulemaking petition for design certification. However, the NRC staff plans some review activities at this early stage to give GE notice of issues and concerns. Therefore, Docket Number 52–004 is being assigned to the application to facilitate public access to correspondence and review information. No formal review schedule has been established. The staff will establish its review schedule for final design approval after GE supplies the missing material.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Previous correspondence on this application was filed under Project Number 681. The new docket number established for this application is 52–004.

Dated at Rockville, Maryland this 8th day of December 1992.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Director, Standardization Project Directorate, Associate Directorate for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 92–30725 Filed 12–17–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31587; File No. SR–Amex–92–31]

Self-Regulatory Organizations; Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to Automatic Cancellation of Orders in Expiring Rights and Warrants

December 11, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 28, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to Rule 179 provides for automatic cancellation of "regular way" and "next day" orders in expiring rights and warrants prior to commencing "next day" and "cash" trading, respectively, in such issues.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 179 provides time frames during which orders in expiring rights and warrants must be for "next day" delivery or for "cash" settlement, rather than for "regular way" five-day delivery. In order to assure that trades are settled prior to expiration, orders in expiring warrants must be for "cash" settlement during the last five business days before expiration, and for "next day" delivery during the three business days preceding that five day period. Orders in rights must be for "cash" settlement on the last trading day before expiration and for "next day" delivery on the five business days preceding the last trading day. Currently, "regular way" orders and "next day" orders on the specialist's book are not cancelled unless prior to execution the member or member organization from whom the specialist received the order cancels it. If the order is not cancelled, it automatically becomes "next day" or "cash" in accordance with the above time frames.

The Exchange has determined to amend Rule 179 to provide, in accordance with the time frames of the Rule, for the automatic cancellation of open "regular way" and "next day" orders in expiring rights and warrants entered in the Post Execution Reporting ("PER") system and on the specialist's book prior to commencing "next day" and "cash" trading in those securities. The normal ticker notice provided by the Exchange with respect to expiring rights and warrants would provide ample notice to members and member organizations regarding such order cancellations thereby giving them the opportunity to replace or not replace their cancelled orders. Substituted "next day" and "cash" orders would be treated as new orders and not entitled to retain the priority on the specialist's book of the "regular way" order.

The new procedures are particularly important in light of the utilization of the Amex Order File ("AOF") by an increasing number of member organizations. GTC/GTX (good 'til cancelled) or open orders in rights or warrants entered into PER/AOF as "regular way" orders but not cancelled prior to the automatic "non-regular way" trading (*e.g.*, "next day" or "cash") may result in errors in clearance and settlement. "Regular way" GTC/GTX orders entered by member organizations are recorded on the AOF with the Amex omnibus give-up

"APEX" to facilitate clearance through National Securities Clearing Corporation ("NSCC") facilities. Currently, the omnibus give-up "APEX" remains on the order on file and on the paper order on the specialist's book until it is executed, cancelled, or manually deleted. "Cash" or "next day" trades require a member organization's specific give-up symbol, instead of "APEX", to facilitate clearance of such "non-regular way" trades through NSCC facilities. Modifications to AOF to permit automatic purging from the system of open orders in expiring rights and warrants and their re-entry by member organizations with the organization's specific "give-up", if applicable, will facilitate accurate clearance and settlement of "cash" and "next day" trades without special action being taken by the specialist.

2. Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-92-31 and should be submitted by January 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30781 Filed 12-17-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31591; File No. SR-AMEX-92-18]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to Portfolio Depository Receipts

December 11, 1992.

On July 22, 1992,[1] the American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder,[3] a proposed rule change to adopt new Rules 1000 *et seq.* to provide for the listing and trading of Portfolio Depositary Receipts ("PDRs"), which are securities issued by a unit investment trust and holding a portfolio of securities linked to an index.

Notice of the proposed rule changes were published for comment and appeared in the **Federal Register** on August 20, 1992.[4] No comments were received on the proposed rule changes. This order approves the proposal.

II. Description of the Proposal

A. Listing Requirements for Unit Investment Trusts

The Exchange proposes to adopt new Rules 1000 *et seq.* to accommodate the trading on the AMEX of PDRs, securities which are interests in a unit investment trust ("Trust")[5] holding a portfolio of securities linked to an index. The Trust sponsor ("Sponsor") will be PDR Services Corporation, a wholly-owned subsidiary of the AMEX. Each Trust will provide investors with an instrument that closely tracks the underlying portfolio of securities, that trades like a share of common stock, and that pays PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).

Under the proposal, the Exchange may list and trade PDRs based on one or more stock indexes or securities portfolios. PDRs based on each particular stock index or portfolio shall be designated as a separate series and identified by a unique symbol. The stocks that are included in an index or portfolio on which PDRs are based shall be selected by the AMEX or its agent, a wholly-owned subsidiary of the Exchange, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.[6]

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[1] The AMEX originally submitted its filing on June 5, 1992. On July 22, 1992, the AMEX submitted an amendment to its filing.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b-4 (1991).

[4] See Securities Exchange Act Release No. 31039 (August 20, 1992), 57 FR 37851.

[5] The SPDR Trust, Series I, filed with the Commission's Division of Investment Management an application seeking, among other things, an order: (1) Permitting secondary market transactions in SPDRs at negotiated prices, rather than at a current public offering price described in the prospectus as required by section 22(d) of the Investment Company Act of 1940 ("'40 Act") and Rule 22c-1; and (2) permitting the sale of Standard & Poor's ("S&P") Depositary Receipts ("SPDRs") to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by section 4(3) of the Securities Act of 1933 but may be required according to section 24l(d) of the '40 Act for redeemable securities issued by a Unit Investment Trust. The Commission granted these exemptions on October 26, 1992. The exemptions permit individual SPDRs to be traded in secondary market transactions similar to closed-end investment company securities.

[6] The Commission notes that the AMEX is required to submit rule filings pursuant to section 19(b) of the Act before it lists a PDR based on a new index or group of securities. See letter from James P. Duffy, Senior Vice President & General Counsel, Legal & Regulatory Policy Division, AMEX, to Sharon Lawson, Assistant Director, Division of

Continued

In connection with an initial listing, the Exchange proposes that, for each Trust of PDRs, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b–4 for each Trust.[7]

Because the Trust operates on an open-end type basis, and because the number of SPDR holders is subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on PDR holders to consider suspending trading in or delisting a series of PDRs, with the consequent termination of the Trust, unless the number of holders remains severely depressed during an extended time period. Therefore, twelve months after the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) If the Index on which the Trust is based is no longer calculated; or

(c) If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing and its PDRs redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in the Trust prospectus. For example, the Sponsor, following notice to PDR holders, shall have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.[8]

B. Listing of SPDRs

The AMEX expects that the first Trust to be formed in connection with the issuance of Portfolio Depositary Receipts will be based on the S&P 500 Composite Stock Price Index ("S&P 500 Index" or "Index") with the securities of the Trust known as SPDRs. It is anticipated that the term of the SPDR Trust will be 25 years.[9] The Trustee of the SPDR Trust will have the right to vote any of the voting stocks held by the Trust, and will vote such stocks of each issuer in the same proportion as all other voting shares of that issuer voted.[10] Therefore, SPDR holders will not be able to directly vote the shares of the issuers underlying SPDRs.

The Trust will issue SPDRs in exchange for "Portfolio Deposits" of all of the S&P 500 Index securities, weighted according to their representation in the Index.[11] An investor making a Portfolio Deposit into the Trust will receive a "Creation Unit" composed of 500,000 SPDRs, with an initial net asset value of approximately $2.1 million.[12] The price of SPDRs will be based on a current bid/offer market.[13] SPDRs will not be redeemable individually, but may be redeemed in Creation Unit size (*i.e.*, 50,000 SPDRs). Specifically, a Creation Unit may be redeemed for an in-kind distribution of securities identical to a Portfolio Deposit.[14] PDR Distribution Services, Inc. ("Distributor"), a registered broker-dealer, will act as underwriter of SPDRs on an agency basis.

C. Trading of PDRs

The Amex proposal includes rules to govern the trading of PDRs, in general, and SPDRs, in particular.[15] First the AMEX proposal provides procedures to govern the application of trading halts. Specifically, the AMEX has stated that prior to commencement of trading in PDRs, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. Under the proposal, the circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Exchange Rule 918C(b), the AMEX's rule governing trading rotations, halts and suspensions for stock index options, in exercising its discretion to halt or suspend trading. For a PDR based on an index, these factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

According to the AMEX, SPDR trading would be halted (along with other securities on the Exchange) if the circuit breaker parameters under AMEX Rule 117 have been reached.[16] The triggering of futures price limits for the S&P 500, S&P 100 Composite Price Stock Index ("S&P 100 Index") or Major Market Index ("MMI") futures contracts will not, in themselves, result in a halt in SPDR trading or a delayed opening. Such an event, however, could be considered by the Exchange, along with other factors, such as a halt in trading in S&P 100 Index Options ("OEX"), S&P

Market Regulation, SEC, dated July 23, 1992 ("AMEX Letter").

[7] The AMEX indicates that 150,000 SPDRs (approximately $6 million) will be required to be outstanding when trading commences.

[8] For an example of some specific conditions for termination of a Trust, see *infra* note 9.

[9] The SPDR Trust may terminate at an earlier time under certain circumstances, as provided in the prospectus. For example, the SPDR Trust may terminate if the license agreement with S&P Corporation terminates. In addition, the Sponsor of the SPDR Trust may terminate the Trust if the net asset value of the Trust, after six months from inception, falls below $150 million, and, after three years from inception, the net asset value of the Trust falls below $350 million, as adjusted annually for inflation.

[10] The Trustee will abstain from voting if the stocks held by the Trust cannot be voted in proportion as all other shares of the securities are voted.

[11] A Portfolio Deposit also will include a cash payment equal to a *pro rata* portion of the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, plus or minus an amount designed to compensate for any difference between the net asset value of the Portfolio Deposit and the S&P 500 Index caused by, among other things, the fact that a Portfolio Deposit cannot contain fractional shares.

[12] The Trust is structured so that the net asset value of an individual SPDR should equal one-tenth of the value of the S&P 500 Index. At the index's current level, the net asset value of a SPDR would be approximately $43 of the S&P 500 Index. At the index's current level, the net asset value of a SPDR would be approxiamtely $43.

[13] The AMEX has, in a separate rule filing, proposed to use 1/32's as the minimum fraction for trading in SPDRs. See file no. SR–AMEX–92–14 (December 11, 1992).

[14] An investor redeeming a Creation Unit will receive Index securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that particular day. Since the Trust will redeem in kind rather than for cash, the Trustee will not be forced to maintain cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the S&P 500 Index, enabling the Trust to track the Index more closely than other basket products that must allocate a portion of their assets for cash redemptions.

[15] Because SPDRs represent a portfolio of securities, and do not involve the trading of the stocks in the portfolio on an individual basis, the Commission believes that SPDRs are distinct and separate securities from the securities contained in the portfolio and, thus, would not be subject to off-board trading restrictions. Accordingly, SPDRs may be traded off-exchange or off-board pursuant to Rule 19c–3. In addition, SPDRs also would be eligible for trading by other exchange markets pursuant to the unlisted trading privileges ("UTP") procedure, as set forth under 12(f) under the Act.

[16] AMEX Rule 117 provides that:

If the Dow Jones Industrial Average ("DJIA") is calculated at a value of 250 or more points below its closing value on the previous trading day ("Closing Value"), trading in securities on the Exchange shall halt and not reopen for one hour. If, on the same day, the DJIA is subsequently calculated at a value of 400 or more points below that closing value, trading in securities on the Exchange shall halt and may not reopen for two hours.

500 Index Options ("SPX"), or Major Market Index Options ("XMI"), in deciding whether to halt trading in SPDRs.[17]

Second, the AMEX proposal requires that members and member organizations provide to all purchasers of each series of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in such series of PDRs is delivered to such purchaser. In this regard, a number or member organization carrying an omnibus account for a non-member broker-dealer will be required to inform such non-member that execution of an order to purchase PDRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to member and member organizations. The written description must be included with any sales material on that series of PDRs that a member provides to customers or the public. Moreover, other written materials provided by a member or member organization to customers or the public making specific reference to a series of PDRs as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of PDRs] has been prepared by the AMEX and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of PDRs]. In addition, upon request you may obtain from your broker a prospectus for [the series of PDRs]." [18] Finally, as noted above, the Exchange requires that members and member organizations provide customers with a copy of the prospectus for a series of PDRs upon request.

Third, the proposal provides in Commentary .02 to Proposed AMEX Rule 1000 that transactions in PDRs may be necessary on the AMEX until 4:15 p.m. each business day.[19] Secondary market transactions of PDRs, in general, and SPDRs, in particular, will be reported to the consolidated tape.

III. Discussion

The Commission 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, and, in particular, the requirements of section 6(b)(5). Specifically, the Commission believes that providing for the exchange-trading of PDRs, in general, and SPDRs, in particular, will offer a new and innovative means of participating in the securities markets. In particular, the Commission believes that the trading of PDRs will provide investors with increased flexibility in satisfying their investment needs of allowing them to purchase and sell a low-cost security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day.[20] The Commission also believes that the PDRs will benefit investors by allowing them to trade securities based on unit investment trusts in secondary market transactions.[21]

The Commission believes that the listing and trading on an exchange of a security like SPDRs, which replicates the performance of a broad portfolio of stocks, could benefit the securities markets by, among other things, helping to ameliorate the volatility occasionally experienced in these markets, such as during the October 1987 and 1989 Market Breaks.[22] The Commission believes the creation of one or more products where actual portfolios of stocks or instruments representing portfolios of stock, such as PDRs, that can trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.[23]

The 1987 Market Break Report noted the potential benefits to be derived from providing a market where institutional investors and member firms could focus their equity transactions at posts trading a portfolio of stocks in a single transaction. In particular, the 1987 Market Break Report noted that the specialist(s) and the trading crowd(s) at the portfolio post could provide additional liquidity, that is currently unavailable at the posts for trading in each of the individual stocks, as well as provide the additional efficiencies associated with effecting a single transaction in a portfolio of securities as opposed to numerous transactions in individual stocks. The additional layer of liquidity to the market could help to absorb the velocity and concentration of trading associated with index-related trading strategies involving individual stocks. Because market portfolio instruments, such as SPDRs, would be traded at a single location on an exchange floor, the potentially adverse effects of program trading order flows during volatile market conditions, such as imbalances in particular stocks, would be diminished.[24] Moreover, the trading of a single security replicating the performance of a broad portfolio of stocks, in general, and SPDRs, in particular, will provide an easy and inexpensive method to clear and settle a portfolio of stocks. Accordingly, given the design of the PDRs in general, and SPDRs, in particular, the Commission believes that the benefits to the marketplace noted above resulting from the trading of a "basket" product likely will result from the trading of PDRs.

As noted above, an individual SPDR will have a value approximately equal to 10% of the value of the S&P 500 Index. This should potentially make this product more available and useful to individual retail investors desiring to hold a security replicating the performance of a broad portfolio of stocks. Accordingly, the Commission believes that SPDRs will provide retail investors with a cost efficient means to make investment decisions based on the direction of the market as a whole and may provide stock market participants several advantages over existing

[17] See AMEX Letter, *supra* note 6.

[18] See Commentary .01 to Proposed AMEX Rule 1000.

[19] SPDR creations and redemptions, however, will not be reported to the tape by any party, nor will securities delivered to the Trust upon the creation of SPDRs or securities delivered by the Trust to SPDR holders upon redemption. The transfer of stock to create or redeem SPDRs is not a transaction on the Exchange, and, therefore is not a transaction that would be subject to the requirements of Rule 11Ac1–2 under the Act. Accordingly, because no transactions in individual S&P 500 stocks will occur on the AMEX, an application to trade such securities pursuant to UTP procedures is unnecessary and not required under the Act.

[20] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[21] The Commission notes, however, that unlike open-end funds where investors have the right to redeem their fund shares on a daily basis, investors could only redeem SPDRs in 50,000 share units. Nevertheless, SPDRs would have the added benefit of liquidity from the secondary market and SPDR holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

[22] See Division of Market Regulation, SEC, The October 1987 Market Break (February 1988) ("1987 Market Break Report") and Division of Market Regulation, SEC, Market Analysis of October 13, and 16, 1989 (December 1990).

[23] Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a "basket" or group of 15 or more stocks having a total market value of $1 million or more.

[24] See *infra* note 35.

methods of effecting program trades involving stocks.

The Commission also believes that PDRs, in general, and SPDRs, in particular, will provide investors with several advantages over standard open-end S&P 500 Index mutual fund shares. In particular, investors will have the ability to trade SPDRs continuously throughout the business day in secondary market transactions at negotiated prices.[25] In contrast, pursuant to Investment Company Act Rule 22c–1,[26] holders and prospective holders of open-end mutual fund shares are limited to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors.[27] Accordingly, PDRs, and SPDRs in particular, will allow investors to (1) respond quickly to changes in the market; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although SPDRs are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their price will still be derived and based upon the securities held in the Trust. In essence, SPDRs are equity securities that are priced off a portfolio of stocks based on the S&P 500 Index.[28] Accordingly, the level of risk involved in the purchase or sale of a SPDR is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for SPDRs is based on a basket of stocks. Nonetheless, the Commission has several specific concerns regarding the trading of these securities. In particular, SPDRs raise disclosure, market impact and secondary market trading issues that must be addressed adequately. As discussed in more detail below, the Commission believes the AMEX proposal adequately addresses these concerns.

A. Disclosure

The Commission believes the AMEX proposal contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading PDRs. As noted above, the proposal include five aspects addressing disclosure concerns. First, AMEX members must provide their customers trading PDRs with a written explanation of any special characteristics and risks attendant to trading such PDR securities (such as SPDRs), in a form prepared by the AMEX.[29] Second, members and member orgnaizations must include this written product description with any sales material relating to a series of PDRs that is provided to customers or the public. Third, any other written materials provided by a member or member organization to customers or the public referencing PDRs as an investment vehicle must include a statement in a form specified by the AMEX, that a circular and prospectus are available from a broker upon request. Fourth, a member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of PDRs for such omnibus account will be deemed to constitute agreement by the non-member to make the written product description available to its customers on the same terms as member firms. Accordingly, the Commission believes that investors in PDR securities, in general, and SPDRs, in particular, will be provided with adequate disclosure of the unique characteristics of the PDR instruments and other relevant information pertaining to the instruments.[30]

Finally, under the AMEX's proposal there will be no special account opening or customer suitability rules applicable to the trading of PDRs.[31] Nevertheless, pursuant to proposed AMEX Rule 1000(a), the AMEX equity rules governing account opening and suitability will apply. Specifically, these provisions provide that members shall use due diligence to learn the essential facts relative to every customer, order or account accepted, and, prior to or promptly after the competition of a transaction for such account, specifically approve the opening of the account.[32]

B. Market Impact

The Commission believes the AMEX has adequately addressed the potential market impact concerns raised by its proposal. First, the AMEX proposal permits the listing and trading of specific PDRs only after review by the Commission.[33] Second, the AMEX has developed policies regarding trading halts in PDRs. Specifically, the Exchange would halt PDR trading if the circuit breaker parameters under AMEX Rule 117 were reached.[34] In addition, in deciding whether to halt trading or conduct a delayed opening in PDRs, in general, and SPDRs, in particular, the AMEX represents that it will be guided by, but not necessarily bound to, relevant stock index option trading rules. Specifically, consistent with AMEX Rule 918C(b), the AMEX may consider whether trading has been halted or suspended in the primary market(s) for any combination of

[25] Because of potential arbitrage opportunities, the Commission believes that SPDRs will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of a SPDR comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes the Trust will track the S&P 500 Index more closely than an open-end index fund because the Trust will accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, the Trust will redeem only in kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the S&P 500 Index.

[26] Investment Company Act Rule 22c–1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted SPDR Trust an exemption from this provision in order to allow SPDRs to trade at negotiated prices in the secondary market.

[27] *Id.*

[28] In fact, the margin requirement for the PDRs will be identical to the requirements for other equity securities. The short sale of a SPDR will be margined at 150% of the current market value of the security, while long SPDR positions are set at 50% of the current market value of the security, the usual Regulation T requirements for equity margin stocks.

[29] The AMEX submitted with its rule filing a SPDR Product Description required to be distributed to customers trading SPDRs. This document describes, among other things, that SPDRs possess risks similar to those present when investing in a broadly based portfolio of common stocks, including the risk that the general level of stock prices may decline, thereby adversely affecting the value of such investment.

[30] In addition, the exemptions granted by the Commission under the Investment Company Act of 1940 that permit the secondary market trading of SPDRs are specifically conditioned upon the customer disclosure requirements described above.

[31] This reflects the fact that PDRs are equity products and not an options product, and, therefore, do not necessitate the imposition of options-like rules.

[32] See Amex Rule 411.

[33] See AMEX Letter, *supra* note 6. In reviewing proposals concerning specific series of PDRs, the Commission expects to focus on whether the PDR series by virtue of its design or composition raises potential manipulation, disclosure, or other trading abuse concerns.

[34] The circuit breaker rules provide that trading in the stock, options and futures markets will halt for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 points or more from its previous day's closing level, and, thereafter, trading would halt for an additional two hours if the DJIA declines 400 points from the previous day's close. The triggering of futures price limits for the S&P 500, S&P 100, or MMI futures, however, will not, in themselves, result in a halt in PDR trading or delayed openings. Such an event, however, could be considered by the Exchange, along with other factors, in deciding whether to halt trading in PDRs.

underlying stocks accounting for 20% or more of the applicable current index group value or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Commission believes that the listing and trading of SPDRs will not adversely impact U.S. securities markets. The corpus of the SPDR Trust will be a portfolio of stocks replicating the S&P 500 Index, a broad-based, capitalization-weighted index consisting of 500 of the most actively-traded and liquid stocks in the U.S. Accordingly, the Commission believes that SPDRs do not contain features that will make them likely to impact adversely the U.S. securities markets. In fact, as described above, the Commission believes SPDRs may provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets for individual stocks.[35] Finally, the AMEX has developed surveillance procedures for PDRs that incorporate and rely upon existing AMEX surveillance procedures governing options and equities.

C. Trading Rules

The Commission finds that the AMEX has designed adequate rules and procedures to govern the trading of PDR securities, including SPDRs. Specifically, because PDRs, in general, and SPDRs, in particular, are equity securities that will be subject to the full panoply of AMEX rules governing the trading of equity securities on the AMEX, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists. In addition, the AMEX has developed specific listing and delisting criteria for PDRs that will help to ensure that the markets for PDRs will be deep and liquid. As noted above, the AMEX also has developed trading halt procedures governing PDRs. Accordingly, the Commission believes that the AMEX's rules governing the trading of PDRs provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. The Commission also finds that permitting the trading of PDRs until 4:15 p.m. is appropriate given the availability of other basket products, such as stock index options, until that time.

IV. Conclusion

The Commission finds that the listing and trading of PDRs, in general, and SPDRs, in particular, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). As discussed above, the trading of PDRs, including SPDRs, on a secondary market, should provide a variety of benefits to the marketplace and investors trading portfolios of securities. Accordingly, the Commission believes that SPDRs will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[36] that the proposed rule change (SR-AMEX-92-18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30782 Filed 12-17-92; 8:45 am]

BILLING CODE 8010-01-M

[35] Even though PDR transactions may serve as substitutes for transactions in the cash market, thereby making the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create PDRs could conceivably have an impact on price levels in the cash market. In particular, if a PDR is redeemed, the resulting long stock position could be sold into the market, thereby depressing prices further. The Commission notes, however, that the redemption or creation of PDRs likely will not exacerbate a price movement because PDRs will be subject to the equity margin requirements of 50% and PDRs are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes PDRs and SPDRs, in particular, will serve as a vehicle to accommodate and "bundle" order flow that otherwise would flow to the cash market, thereby allowing such order flow to be handled more efficiently and effectively. Accordingly, although PDRs and SPDRs could, in certain circumstances, have an impact on the cash market, on balance we believe the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

[36] 15 U.S.C. 78s(b)(2) (1988).

[37] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-31586; International Series Release No. 508; File No. SR-NASD-92-27]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Amendment and Order Granting Temporary Accelerated Approval of Proposed Rule Change Relating to Issuer Notification Requirements and Fees for the Issuance of Additional Shares and the Creation of Certain Stock Plans

December 11, 1992.

On June 17, 1992, the National Association of Securities Dealers, Inc. ("NASD", "Association" or "Corporation") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder.[2] The proposal amends Schedule D of the NASD's By-Laws[3] in order to require issuers included in either the Regular NASDAQ System ("regular NASDAQ") or the NASDAQ/National Market System ("NASDAQ/NMS"), (together known as "NASDAQ") to file with the NASD notification of the creation of a stock option, employee stock purchase or other stock remuneration plan or the issuance of additional shares of any class of securities included in NASDAQ, other than securities issued under such plans. Issuers of securities (except for ADRs) included in NASDAQ will also be required to notify the NASD of any change in the issuer's transfer agent or registrar. Further, the rule change amends Schedule D of the By-Laws[4] to require NASDAQ issuers to pay a fee for each issuance of additional shares of an already included security in connection with certain enumerated transactions.

Notice of the proposed rule change, as originally filed, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 31289, International Release No. 467, October 5, 1992) and by publication in the Federal Register (57 FR 46887, October 13, 1992). No comments were received in response to the Commission release.

On November 18, 1992, the NASD submitted Amendment No. 1 to the proposed rule change. Amendment No. 1 responds to four comment letters received by the Commission prior to publication of notice of the original filing; amends the language of the filing to clarify the intent of the NASD, especially to clarify that the proposed fee will be a *per issuance* fee and that the notification requirements apply only to the creation of certain stock remuneration plans and the issuance of additional shares; corrects certain technical errors in the filing; and requests an effective date of December 1, 1992 for the rule change.[5]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] NASD Securities Dealers Manual, Schedule D to the By-Laws, Part II, Sections 1 and 2, CCH, ¶¶ 1803-1804.

[4] NASD Securities Dealers Manual, Schedule D to the By-Laws, Part IV, CCH, ¶¶ 1815-1816.

[5] By letter dated December 3, 1992, the NASD withdrew its request for an effective date of

Continued

Amendment No. 2, filed on December 8, 1992, further clarifies the rule change by making certain technical changes to the text of the rule change.

By this release, the Commission: (i) Solicits comments on Amendment Nos. 1 and 2; and (ii) approves the proposed rule change, as amended, on an accelerated basis, until February 28, 1993. At the end of the comment period for Amendment Nos. 1 and 2, the Commission will determine whether to approve the proposed rule change, as amended, on a permanent basis.

Below is the text of the rule change, as amended by Amendment Nos. 1 and 2. Language added to the original proposal is italicized; proposed deletions to the language originally filed as SR–NASD–92–27 are in brackets.

Schedule D to the NASD By-Laws

Part II

Qualification Requirements for NASDAQ Securities

Sec. 1 Qualification Requirements for Domestic and Canadian Securities

* * * * *

(c)

* * * * *

(15) The issuer shall be required to file on a form designated by the Association notification of the creation of a stock option, [stock purchase or similar plan or arrangement to issue additional shares] *employee stock purchase or other stock remuneration plan* or the issuance of additional shares of any class of securities included in the NASDAQ System, *except for the issuance of additional shares under a stock option, employee stock purchase or other stock remuneration plan*, no later than 15 calendar days prior to the creation of the plan[, arrangement] or *the* issuance *of additional shares*.

(16) The issuer of any class of securities included in the NASDAQ System shall notify the Association promptly in writing of any change in the issuer's transfer agent or registrar.

Subsections (15)–(17) are renumbered (17)–(19) respectively.

Sec. 2 Qualification Requirements for non-Canadian Foreign Securities and American Depositary Receipts.

* * * * *

(e)

* * * * *

(14) The issuer shall be required to file on a form designated by the Association notification of the creation of a stock option, [stock purchase or similar plan or arrangement to issue additional shares] *employee stock purchase or other stock remuneration plan* or the issuance of additional shares of any class of securities included in the NASDAQ System, except for *the issuance of additional shares under a stock option, employee stock purchase or other stock remuneration plan and* American Depository Receipts, no later than 15 calendar days prior to the date of creation of the plan[, arrangement] or *the* issuance *of additional shares*.

(15) The issuer of any class of securities included in the NASDAQ System, except for American Depositary Receipts, shall notify the Association promptly in writing of any change in the issuer's transfer agent or registrar.

Subsections (14)–(16) are renumbered (16)–(18) respectively.

* * * * *

Part IV

Listing Fees

The NASDAQ Stock Market-National Market System

* * * * *

B. Additional Shares

1. The issuer of each class of security, other than American Depositary Receipts, which is listed in the National Market System shall pay to the Corporation the fee set forth in paragraph 2. below in connection with the issuance of additional shares of each class of listed security set forth in paragraph 3. below.

2. The fee in connection with additional shares shall be $2,000 or $.02 per additional share, whichever is higher, up to a maximum of $17,500 per [issuer] *issuance*.

3. The fee in connection with additional shares is applicable to the following issuances of securities:

a. Acquisitions, mergers or consolidations;

b. Public offerings;

c. Rights and subscription offerings;

d. Exchange offers; and

e. Private placements.

4. Payment of the fee to the [Association] *Corporation* shall be included with the issuer notification to the Association of the issuance of additional shares of securities as required under provisions of Sections 1(c)(15) and 2(e)(14) of Part II to Schedule D of the NASD By-Laws.

[B]*C*. Annual Fee-Domestic and Foreign Issues.

* * * * *

[C]*D*. Annual Fee-American Depositary Receipts (ADRs).

* * * * *

Regular NASDAQ System

[D]*E*. Entry Fee.

* * * * *

F. Additional Shares

1. The issuer of each class of security other than American Depositary Receipts which is listed in the Regular NASDAQ System shall pay to the Corporation the fee set forth in paragraph 2. below in connection with the issuance of additional shares of each class of listed security set forth in paragraph 3. below.

2. The fee in connection with additional shares shall be $1,000 or $.01 per additional share, whichever is higher, up to a maximum of $7,500 per [issuer] *issuance*.

3. The fee in connection with additional shares is applicable to the following issuances of securities:

a. Acquisitions, mergers or consolidations;

b. Public offerings;

c. Rights and subscription offerings;

d. Exchange offers; and

e. Private placements.

4. Payment of the fee to the [Association] *Corporation* shall be included with the issuer notification to the Association of the issuance of additional shares of securities as required under provisions of Sections 1(c)(15) and 2(e)(14) of Part II to Schedule D of the NASD By-Laws.

Subsections E–G are renumbered G–I, respectively.

Fifteen Days Prior Notice

In the past, the NASD has not required issuers included in NASDAQ to file with the NASD notification of the issuance of additional shares or notification of the creation of stock option, employee stock purchase or other stock remuneration plans under which securities included in NASDAQ will be issued.[6] The NASD has determined that such notification will supply the NASD with relevant information regarding NASDAQ issuers

December 1, 1992. *See* letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC, dated December 3, 1992.

[6] In contrast to the application and approval procedures required by the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") for issuance of additional securities, the instant rule change requires issuers only to submit notification to the NASD of the issuance of additional shares. See § 703.00, NYSE Manual and sections 301–343 of part 3 to the Listing Standards, Policies and Requirements of the AMEX Guide, Vol. 2. The NYSE and AMEX do not permit a listed company either to issue or to authorize the company's registrar or transfer agent to issue or register additional securities of a class listed on the exchange until the company has filed an application with the exchange. The application requirements of the NYSE and AMEX also apply to the creation of stock option, stock purchase and other remuneration plans involving listed securities.

and the purpose for which the securities are being issued. The rule change approved herein on a temporary basis will require domestic and foreign issuers of securities included in NASDAQ, except for issuers of such securities held in American Depositary Receipts ("ADRs"), to file on a NASD designated form, notification regarding the issuance of additional shares of any class of securities included in NASDAQ no later than 15 calendar days prior to such issuance.[7] Issuances of additional securities include securities issued in connection with dividends, stock splits, rights and exchange offers, public and private offers, acquisitions, mergers or consolidations. Issuances of additional shares will not include securities *issued under* a stock option, employee stock purchase or other stock remuneration plan.[8]

However, issuers of securities included in NASDAQ will be required to provide detailed notification to the NASD upon the *creation* of a stock option, employee stock purchase or other stock remuneration plan. The NASD believes such plans have the potential for affecting the market of issuers in NASDAQ. Notification will further facilitate NASD oversight of the NASDAQ/NMS criteria for shareholder approval of certain remuneration plans under section 5(i) of Part III to Schedule D of the NASD's By-Laws.[9] In the case of such plans, the NASD believes only notification of creation of the plan will be necessary for oversight purposes and not actual notification of the periodic issuance of stock under the plan. The NASD, therefore, will require that domestic and foreign issuers of securities included in NASDAQ, except for issuers having such securities held in ADRs, file on a NASD designated form notification regarding the creation of a stock option, employee stock purchase or other stock remuneration plan in connection with any class of securities included in NASDAQ no later than 15 calendar days prior to creation of such plan.

Notification of Change in Transfer Agent or Registrar

The NASD previously did not require a NASDAQ issuer to notify the NASD when there was a change in the issuer's transfer agent or registrar. The NASD believes prompt receipt of such information is relevant to the NASD's oversight of NASDAQ. Therefore, upon the effective date of this approval order, foreign and domestic issuers of securities included in NASDAQ, except for issuers of securities held in ADRs,[10] must notify the NASD promptly in writing of any change in the issuer's transfer agent or registrar.

Fee for Issuances of Additional Shares

The NASD is also imposing a fee on NASDAQ issuers to be paid when such issuers notify the NASD of the issuance of an additional amount of an already included security in connection with the following transactions: (a) Acquisitions, mergers or consolidations; (b) public offerings; (c) rights and subscription offerings; (d) exchange offers; and (e) private placements. Under the rule change, the issuance of additional shares of an already included security in connection with a transaction that is not listed above would not have a fee for additional shares imposed. For example, the issuance of additional shares in connection with a stock option, dividend reinvestment plan, stock split or stock dividend will not result in a fee under the rule change. Moreover, no fee will be charged in connection with the establishment of stock option, employee stock purchase or other stock remuneration plan.

The NASD has created a separate fee schedule for regular NASDAQ and NASDAQ/NMS issuers that the NASD believes reflects the different level of service and exposure provided to such respective issuers in NASDAQ. For securities included in regular NASDAQ, issuances or plans to issue additional securities under the specific circumstances set forth above are subject to a fee of $1,000 or $.01 per additional share, whichever is higher, up to a maximum of $7,500 per issuance.[11] For securities included in NASDAQ/NMS, issuances or plans to issue additional securities are subject to a fee of $2,000 or $.02 per additional share, whichever is higher, up to a maximum of $17,500 per issuance.[12]

Increased funding for Issuer-Related Operations

The NASD has stated that the fees obtained from the rule change are intended to fund additional issuer-related operations. Such operations include educational initiatives, issuer service initiatives, and NASD surveillance measures currently being created, or improved, which the NASD believes will enhance the quality of NASDAQ for issuers and improve the capital-raising capabilities for such issuers.

Specifically, the NASD states that it plans educational programs for registered representatives of NASD members to increase their knowledge of the market structure of NASDAQ. Training programs are also planned for the entry level personnel of NASD members to increase their knowledge of the NASD and NASDAQ by focusing on issues such as NASD market surveillance procedures, NASDAQ trading practices, and the qualifications criteria for companies included in NASDAQ. Also planned is the development of educational programs for international investors regarding the qualification requirements of NASDAQ. In addition, the revenues obtained from the fee will supplement current advertising to make the public more aware of the opportunities of investing in the stock of NASDAQ companies.

The NASD states that revenues obtained from the fee also will be used to enhance the ability of NASDAQ to educate individual companies on market-related issues whenever individual corporate inquiries arise. Specifically, a program is planned to increase the expertise of the NASDAQ representatives whose duty it is to help designated NASDAQ/NMS and regular NASDAQ issuers on a day-to-day basis with inquiries regarding NASDAQ, the securities markets, and questions of capital formation. The NASD also anticipates that the revenues obtained

[7] Rule 10b-17 of the Act requires certain issuers to provide notification to the NASD in connection with: a dividend or other distribution in cash or in kind; a stock split or reverse split; or a rights or subscription offering. To avoid duplicate reporting to the NASD for issuers in the NASDAQ System who are commencing stock splits, rights offers, subscription offers, or a dividend or other distribution involving the issuance of additional shares, the NASD designated notification form will include the information required to be submitted to the NASD pursuant to Rule 10b-17. The NASD will inform issuers in the NASDAQ System by means of an NASD "Notice to Issuers" that compliance with the proposed rule change's notification requirements for purposes of a stock split, a rights offer, a subscription offer, or a dividend or other distribution involving the issuance of additional shares, will also satisfy Rule 10b-17's notification requirements to the NASD.

[8] Amendment No. 2 amends the text of the rule change to clarify that securities issued under a stock option, employee stock purchase or other stock remuneration plan will not be included in the notification requirements.

[9] NASD Securities Dealers Manual, Schedule D to the By-Laws, Part III, Designation of NASDAQ/NMS Securities, Section 5(i), Non-Quantitative Designation Criteria, CCH, ¶1812.

[10] The exception of ADRs is proposed because notifications to U.S. holders of ADRs are provided by the U.S. depository bank that created the ADR and not the registrar or transfer agent of the foreign issuer.

[11] Amendment No. 1 to the filing clarifies that the NASD intends to make the fee a "per issuance" fee. As originally filed, the language of the proposal indicated a fee "per issuer" despite the fact that the descriptive language of the original filing described a "per issuance" fee.

[12] The fee schedule for NASDAQ/NMS is equivalent to the AMEX fee schedule under Section 142 to Part 1 of the Listing Standards, Policies and Requirements of the AMEX Guide, Vol. 2.

from the fee will be used for the development and maintenance of experimental issuer information services including: (i) A system that would permit certain issuers to access current and historical trading data of the company via a personal computer, and to set-up and track the company's stock in comparison to the stock of peer companies; (ii) a surveillance system that would monitor trading in certain stocks pursuant to parameters set by the issuer and provide a next-day report to those companies; and (iii) a system that would provide certain issuers with quarterly and annual customized records of the company's stock trading activity. Revenues from the fee are also intended to support further automation and streamlining of the NASDAQ issuer application procedures, and for further automation of the work-flow process and analysis of maintenance qualifications. In particular, it is intended that monitoring and reviewing the issuances of additional shares of NASDAQ/NMS issuers will be enhanced to ensure compliance with NASDAQ/NMS issuers will be enhanced to ensure compliance with NASDAQ/NMS corporate governance requirements imposed pursuant to Part III, section 5 of Schedule D to the NASD By-Laws.

The NASD states that revenues from the new fee will also support further development and ongoing implementation of NASD Market Surveillance procedures including the implementation of an incident tracking surveillance system, enhancements to the StockWatch automated tracking system ("SWAT"), procurement of additional commercially available surveillance data to better monitor issuer price and volume movement, the development of a surveillance system for the proposed high-yield fixed-income pricing system, enforcement of Rule 10b–6 in accordance with the NASD's passive market-making proposal, and enforcement of the proposed NASD short-sale rule.

Waiver of Fees for Issuances Pending on Effective Date of the Rule Change

The boards of directors of some NASDAQ issuers may have approved the issuance of additional shares without notice of the fee approved herein and that the approved issuance may be pending on the effective date of the rule change. To ensure that all issuers included in NASDAQ have adequate notice of the new fee prior to action by the issuer's board of directors, the NASD will waive the fee for the issuance of additional shares if the company's board approved the issuance prior to the effective date of the rule change.

Comment Letters

Four comment letters were received by the Commission and the NASD prior to Commission publication of the rule change.[13] The four letters, all in opposition to the rule change, responded to an NASD informational bulletin issued in June 1992 describing the proposal.[14] No additional comments were received by the Commission after publication of notice of the filing in the **Federal Register.**

The four commenters each argued directly or indirectly that the fees are excessive. In response, the NASD states that the fees imposed are either comparable to or less than the fees charged for issuances of additional shares of securities listed on the national exchanges. Specifically, the NASD notes that the rule change would impose a significantly lower burden on issuances of additional shares of securities included in regular NASDAQ. For issuances of additional shares of securities in NASDAQ/NMS, the fee schedule is equivalent to the AMEX fee schedule, and lower than the NYSE fee schedule.

Three commenters questioned the NASD's justification for the new fees. For example, the comment letter from Old National Bancorp stated that an issuance of additional shares "results in no additional work on the part of NASDAQ, and notifications of such issuances are already provided for through any number of other sources." In response, the NASD states that it provided ample justification for the new fee schedule in a letter[15] to the Commission staff responding to a request for further justification for the fees. The contents of that letter are reflected in the Notice of Proposed Rule Change published in the **Federal Register.** In essence, the NASD plans to implement new programs or supplement existing programs that it believes will benefit the NASDAQ issuer community.

One commenter raised the concern that the notification requirements would infringe on a company's right to conduct normal business functions.[16] Science Dynamics specifically mentioned notification of serious negotiations where securities are issued under circumstances described under subsections B.3. and F.3. to Part IV of Schedule D. The NASD believes that the commenter was misled by a general description of the rule change in the NASD informational bulletin published in June 1992. The NASD states that the rule change is intended only to require notification of the creation of stock option and other stock remuneration plans and would not require notification of the creation of all types of corporate plans to issue additional shares. To avoid any misinterpretation, the NASD submitted Amendment No. 1, which clarifies that the rule applies only to the creation of stock option, employee stock purchase or other stock remuneration plans.

The NASD further believes that Science Dynamics misinterpreted the fee imposed by the fee schedules to be the same regardless of the size of the issuance. Science Dynamics stated that the issuance of 10,000 warrants at $1 each would cost a company $17,500. In response, the NASD notes that the fee schedules impose a fee on the commenter's described transaction of only $1,000 for an issuer included in regular NASDAQ and only $2,000 for an issuer included in NASDAQ/NMS.

Science Dynamics further notes that its Board of Directors has approved shares for a second offering that may or may not be forthcoming and believes such Board approval will result in the fee being waived for the future issuance. This comment raises the issue of whether a company could avoid future fees on an issuance of additional shares by approving the issuance prior to the effective date of the rule change but with no intent to effect the issuance in the near future. The NASD that the purpose of the waiver is to ensure that every NASDAQ issuer has adequate notice of the fee prior to action by its board of directors and where the approved issuance may be pending on the effective date of the rule filing. The NASD states that the waiver is not intended to provide a permanent exemption for future issuances based on the date of a Board's approval, especially when there was no intent by such approval to effect the issuance in the near future. When the issuance is not pending on the effective date of the rule change, the NASD will review the

[13] Letters from David J. Hunter, President, BI Incorporated, to SEC, dated July 7, 1992; Dan W. Mitchell, Chairman, Old National Bancorp, to Jonathan Katz, Secretary, SEC, dated July 20, 1992; W. Ross C. Corace, President, Foxmoor Industries, Ltd., to SEC, dated July 22, 1992; and Lyndon A. Keele, President, Science Dynamics Corp., to Tony Shaffer, NASD, dated July 22, 1992.

[14] The informational bulletin is attached as Exhibit 1 to Amendment No. 1.

[15] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Katherine A. England, Branch Chief, Division of Market Regulation, SEC, dated August 6, 1992.

[16] Letter from Lyndon A. Keele, President, Science Dynamics Corp. ("Science Dynamics"), to Tony Shaffer, NASD, dated July 22, 1992.

issuer's request for a waiver of the fee on a case-by-case basis to ensure the fee schedule is equitably applied or waived pursuant to the described intent of the waiver.

In its comment letter, Old National Bancorp argued that the fees for additional shares would be unfair when applied in connection with mergers and acquisitions, because the fees would be obtained at the expense of strong, successful companies which are presently in the position to acquire others. In response, the NASD notes that the fee schedules for regular NASDAQ and NASDAQ/NMS would apply to issuances of additional shares not only in connection with acquisitions, mergers or consolidations, but also in connection with public offerings, rights and subscription offerings, exchange offers and private placements. The NASD states that fee schedules would not be imposed on particular types of companies, but on the activity of raising capital by issuing additional shares. The NASD, therefore, believes the rule change will not impose an inequitable burden on successful companies involved in mergers and acquisitions.

Amendment Nos. 1 and 2

As mentioned above, the NASD filed Amendment No. 1 to the rule filing in order to: (i) Respond to the four comment letters received by the NASD and the Commission; (ii) request an effective date of December 1, 1992; (iii) correct certain technical errors; and (iv) provide additional clarification. Amendment No. 2 was filed to further clarify that the NASD will not require notification of the issuance of additional shares under stock option, employee stock purchase or other stock remuneration plans. The Commission is seeking comment on the clarifications to the original rule change.

By filing Amendment No. 1, the NASD proposes to amend part II, sections 1(c)(15) and 2(e)(14) of the proposed rule change relating to certain issuer notification requirements to provide that the scope of the notification requirements apply only to corporate activities that were intended and described in the descriptive language of the original rule filing. In the original descriptive language, it was noted that the purpose of requiring issuer notification prior to the creation of a "stock option, stock purchase or similar plan or arrangement to issue additional shares" is to further facilitate NASD oversight of the NASDAQ/NMS criteria for shareholder approval of certain remuneration plans pursuant to section 5(i) of Part III to Schedule D of the NASD By-Laws. In addition, the NASD indicated that it believes that such plans have the potential to affect the market of issuers in NASDAQ. To avoid misinterpretation, the NASD is amending the description of the situations to which the new reporting requirements apply to "stock option, employee stock purchase or other stock remuneration plan." In the case of such plans, the NASD believes only notification of creation of the plan will be necessary for oversight purposes and not actual notification of the periodic issuance of stock under the plan.

The NASD also seeks to amend part IV, sections B.2. and F.2. to Schedule D of the By-Laws. Specifically, Amendment No. 1 changes the term "per issuer" to "per issuance." As corrected, the text of the proposed rule change on the fee schedules will correspond to the general description of the fee schedules contained in the original filing.[17]

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1993.

Discussion and Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission believes that the rule change is consistent with the provisions of section 15A(b)(5) of the Act.[18] Section 15A(b)(5) requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons. The Commission believes that the fee structure approved herein is equitably divided between those securities included in regular NASDAQ and those included in NASDAQ/NMS. In addition, the Commission believes that the fees imposed are reasonable. Issuers listed on the national exchanges pay fees for the issuance of additional shares that are either equivalent to or less than those that will be imposed by the NASD. The Commission also finds that the rule change approved herein is consistent with the provisions of section 15A(b)(6) of the Act.[19] Section 15A(b)(6), among other things, requires that the rules of the NASD be designed to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Notification of additional issuances of securities will provide the NASD with greater oversight of such securities. In addition, by requiring notification of the creation of stock remuneration plans and the issuance of additional shares, the NASD will be able to more closely monitor the corporate governance requirements for shareholder approval of remuneration plans and the issuance of additional shares under section 5(i) of part III to Schedule D of the By-Laws. Such monitoring should further perfect the NASDAQ marketplace and provide better protection to investors and the public interest.

By letter dated December 3, 1992, the NASD requests that the Commission find good cause for approving the rule filing as amended by Amendment No. 1, prior to the 30th day following publication of notice of the filing of Amendment No. 1 in the **Federal Register**.[20] The NASD states that the proposed rule change is essential to the efficient implementation and maintenance of the issuer-related operations that the NASD expects to fund with the fees anticipated from the rule change. Additionally, the NASD has withdrawn its request in Amendment No. 1 for an effective date of December 1, 1992 and has consented to the approval of the filing on a

[17] In Amendment No. 1, the NASD indicated that the intent expressed in the general description of the proposed fee schedule was to apply the fees on a "per issuance" basis in contrast to the text of the initial proposal which said "per issuer." Further, the NASD notes that footnote 5 to the rule filing cites both the NYSE and AMEX fee schedules for the issuance of additional shares, both of which are "per issuance" fees.

[18] 15 U.S.C. 78*o*-3(b)(5) (1988).

[19] 15 U.S.C. 78*o*-3(b)(6) (1988).

[20] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC, dated December 3, 1992.

temporary basis, until February 28, 1993.

Pursuant to section 19(b)(2) of the Act,[21] the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after publication of Amendment Nos. 1 and 2 in the **Federal Register**. The Commission believes it is important for the NASD to receive notification of the creation of plans for stock option and other stock remuneration plans. Such plans may have effects on the market for the securities of the issuer of which the NASD should be aware. In addition, the NASD has already begun to implement the issuer-related operations that will be funded by the fee requirements approved herein. In order that such operations may continue without interruption, the Commission believes that the rule filing should be approved, as amended, without delay.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved until February 28, 1993.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30649 Filed 12-17-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 31593; File No. SR-PTC-92-01]

Self-Regulatory Organizations; Participants Trust Company; Order Approving a Proposed Rule Change Relating to a Modification of the Rebate Policy

December 11, 1992.

On January 10, 1992, the Participants Trust Company ("PTC") filed a proposed rule change (File No. SR-PTC-92-01) with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposed rule change is to modify PTC's rebate policy relating to excess earnings from principal and interest ("P&I") payments. Notice of the proposed rule change appeared in the **Federal Register** on February 3, 1992.[2] No comments were received. This order approves the proposed rule change.

I. Description

PTC filed the proposed rule change to modify PTC's policy with respect to the rebate of revenues to its participants from invested principal and interest payments ("P&I") received but not yet disbursed. Under the proposed rule change, PTC will distribute excess earnings from invested P&I receipts based on each participant's pro rata share of P&I disbursements.

Under PTC's rebate policy, PTC may determine to distribute revenues based upon consideration as PTC's board of directors deems relevant, including projected earnings of PTC, projected financial needs of PTC, and the desirability of paying dividends on PTC's outstanding stock. Under PTC's current policy on rebates, PTC may distribute revenues based on all sources of revenue, including excess income from invested P&I receipts. Rebates for each participant are calculated on the basis of the participant's share of total service fees regardless of the participant's share of P&I receipts. The proposal will calculate any rebate from excess income from invested P&I receipts differently from other excess revenue and will distribute the excess income from invested P&I receipts based on each participant's pro rata share of P&I.

II. Discussion

Section 17A of the Act sets forth certain standards with regard to clearing agency rules. Specifically, section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[3] As discussed below, the Commission believes that the proposed rule change is consistent with the Act and in particular section 17A(b)(3)(D).

PTC participants use PTC's facilities to access a number of clearing agency services including certificate safekeeping, book-entry deliveries, and pledging or loaning of securities. Because some participants use primarily safekeeping services and other participants use primarily book-entry and pledge facilities, the current policy on rebates may not adequately reflect a participant's use of a particular service.

The Commission, in approving PTC's proposal to eliminate proration charges for the cost of financing P&I advances, required that PTC's board of directors adopt a policy statement addressing the use of excess earnings from invested P&I receipts.[4] This proposal implements a rebate policy for excess earnings from invested P&I receipts based upon participants' pro rata share of P&I disbursements. Since the amount of a participant's rebate directly correlates to the amount of a participant's P&I disbursements, the proposal will provide a more equitable allocation of excess earnings from invested P&I receipts. Thus the Commission believes that the proposed rule change is consistent with the Act in that the proposal equitably allocates dues, fees, and other charges among its participants.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR-PTC-92-01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pusuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30780 Filed 12-17-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31592; File No. SR-OCC-92-35]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Proposed Rule Change Relating to Clarifying a Competency Requirement

December 11, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 12, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[21] 15 U.S.C. 78s(b)(2) (1988).

[22] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 30292 (January 27, 1992), 57 FR 4076.

[3] 15 U.S.C. 78q-1(b)(3)(D).

[4] Because of PTC's efforts to encourage paying agents to make P&I payments available by payment date, the income from investing collected P&I received prior to distribution date is more than sufficient to satisfy anticipated borrowing costs. Securities Exchange Act Release No. 29311 (June 14, 1991), 56 FR 28783.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would change a clarifying amendment to OCC's By-laws[2] and Rules[3] that require U.S. broker-dealer applicants for membership and existing Domestic Clearing Members to employ one associated person who is registered with the National Association of Securities Dealers ("NASD") as a "Limited Principal—Financial and Operations" (a "FINOP"). Under the amendment, the Clearing Member would have met such requirement by employing a person who has passed the appropriate qualification examination even if such person is not registered with the NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In January 1992, the Commission approved an OCC rule change which, among other things, requires that at least one associated person of registered broker-dealer applicants for clearing membership, and existing Domestic Clearing Members, be registered with the National Association of Securities Dealers ("NASD") as a "Limited Principal—Financial and Operations" (a "FINOP").[4] OCC has been advised by the NASD that it does not deem a person who has passed the NASD FINOP examination, but who is associated with a broker-dealer that is not a NASD member, to be registered as a FINOP. Rather, the NASD would consider such person to be qualified as a FINOP. Because the recently approved rule change requires that an associated person be registered as a FINOP, this interpretation could affect broker-dealer applicants for OCC clearing membership and existing Domestic Clearing Members, who are not NASD members (*i.e.*, firms doing a proprietary business), but who have or employ an associated person who has passed the FINOP qualification examination for registration as such. Accordingly, OCC would make a technical amendment to its By-laws and Rules to accommodate this situation. The amendment would require a U.S. broker-dealer applicant for membership or an existing Domestic Clearing Member to employ one associated person who is either registered with NASD as a FINOP or qualified to be a FINOP.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act. Specifically, OCC believes that the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions and will provide for the safeguarding of securities and funds.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period is appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-OCC-92-35 and should be submitted by January 11, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-30784 Filed 12-17-92; 8:45 am]

BILLING CODE 8010-01-M

[2] Article V, section 1, Interpretation and Policy .03 of OCC's By-laws.

[3] Chapter II, Rule 214(a) of OCC's Rules.

[4] Securities Exchange Act Release No. 30169 (January 8, 1992), 57 FR 1776.

[Release No. 34-31588; International Series Release No. 509; File No. SR-OCC-92-31]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Acceptance of Certain Sovereign Debt as Margin Deposits

December 11, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 22, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. On December 2, 1992, OCC filed an amendment to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow the sovereign debt of cross-rate foreign currency countries to be

[1] 15 U.S.C. 78s (1988).

designated as Government Securities acceptable to OCC for margin purposes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 7, 1991, the Commission approved OCC's proposed rule change which set forth the clearance and settlement rules for cross-rate foreign currency options ("cross-rates").[2] As part of the cross-rate filing, OCC amended the definition of Government Securities to allow it to accept as a form of margin the deposit of sovereign debt of any country designated by OCC. With this filing, OCC proposes to designate the sovereign debt of Germany and Japan as Government Securities acceptable to OCC as a form of margin.

Both Germany and Japan are countries whose currencies are presently the "trading currencies"[3] for classes of cross-rate options ("cross-rate countries"). OCC has established banking relationships in both of the cross-rate countries,[4] and OCC has experience respecting the deposit and withdrawal of the trading currencies at these banks. Based upon this experience, OCC has concluded that the criteria used to approve banking relationships for the settlement of cross-rate obligations should be the same criteria used to approve banks to act as custodians for sovereign debt obligations.[5]

OCC currently accepts, with Commission approval, deposits of the sovereign debt of Canada as a form of margin.[6] OCC's experience in valuing the sovereign debt of Canada can be used in valuing the sovereign debt of the cross-rate countries. Appropriate haircuts, as determined by OCC's Membership/Margin Committee ("Committee"), will be taken in valuing such deposits. While the Committee will have some discretion in establishing the haircuts, the Committee will take into consideration the haircuts specified in paragraph (c)(2)(vi)(F) of the Commission's uniform net capital rule, Rule 15c3–1.[7] It is anticipated that the Committee will use such haircuts unless it determines that it has good cause to use some other value. Once the Committee has determined the haircut, the sovereign debt will be valued for margin purposes at the lesser of par value or an amount not to exceed the current market value less the haircut.

OCC notes that the sovereign debt of foreign governments is includable in broker-dealers' net capital computations and that the staff of the Division has issued a no-action letter respecting a request made by the Securities Industry Association ("SIA") wherein the Division stated it would not recommend enforcement action to the Commission if broker-dealers apply the haircut standards set forth in Rule 15c3–1(c)(2)(vi)(F) to certain sovereign debt contained in the broker-dealers' proprietary accounts.[8] The sovereign debt of the cross-rate countries currently meets each and every one of the criteria set forth in both the SIA's request and the Division's no-action letter in that it (1) is a general obligation of a sovereign government; (2) has a fixed maturity date; (3) is not traded flat or in default as to principal or interest; and (4) is rated (implicitly or explicitly) in one of the four higher rating categories by at least two nationally recognized statistical rating organizations.

OCC has been advised that the Commodity Futures Trading Commission ("CFTC"), by letter dated June 30, 1992, approved an amendment to the rules of the Chicago Mercantile Exchange ("CME") to add, among other things, the sovereign obligations of the Group of Seven Leading Industrialized Democracies ("G–7 Countries") as acceptable forms of "performance bonds" for CME Clearing Members. Germany and Japan are included in the list of G–7 Countries.

As in the case of U.S. Government securities deposited with OCC for margin purposes, all interest received on Government Securities of cross-rate countries prior to any sale or negotiation thereof will belong to the Clearing Member. The interest may be released to the Clearing Member upon instructions from the Clearing Member (subject to any withholding tax required by the local jurisdiction of the approved depository).

Finally, the current market value of Government Securities of the cross-rate countries shall be determined by OCC on a daily basis using pricing information from a third party. The third party providing such pricing information will value such securities in local currency and in U.S. dollars using the close of market prices and exchange rates. Initially, the third party will be one of OCC's custodian banks equipped to provide such service. However, OCC reserves the right to engage other third party sources that may provide comparable services.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act,[9] as amended, because it allows OCC to accept the sovereign debt of certain foreign governments as a form of margin like other financial institutions. Moreover, the proposed rules sets forth adequate controls to ensure that OCC will be able to provide for the adequate safeguarding of those securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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[2] Securities Exchange Act Release No. 34–29920, International Series Release No. 340 (November 7, 1991), 56 FR 58105 [File No. SR–OCC–91–04].

[3] In Article XX of OCC's By-Laws, the term "trading currency" is defined as the currency in which premium and exercise prices are determined for a class of cross-rate foreign currency options. The Commission has approved three cross-rates contracts: (1) Options on German (Deutsche) marks with exercise prices in Japanese yen ("DM/JY options"); (2) options on British pounds with exercise prices in Japanese yen ("BP/JY options"); and (3) options on British pounds with exercise prices in German (Deutsche) marks ("BP/DM options").

[4] OCC's lead settlement banks in Cross-Rate Countries are the Mitsubishi Bank in Japan, the Commerzbank in Germany, and Citibank in the United Kingdom.

[5] OCC has established eleven standards to be met before granting approval to a local bank as an approved Cross-Rate Settlement Bank. These eleven standards are set forth in the letter from Jacqueline R. Luthringshausen, Staff Attorney, OCC, to Jeffrey T. Brown, Staff Attorney, Division of Market Regulation ("Division"), Commission (November 20, 1992).

[6] Securities Exchange Act Release No. 25610 (April 28, 1988), 53 FR 15323 [File No. SR–OCC–87–17] (order approving the deposit of the sovereign debt of Canada, including the valuation of such deposit, for margin purposes).

[7] 17 CFR 240.15c3–1 (1992).

[8] Letter from Michael A. Macchiaroli, Assistant Director, Division, to Mr. Dominic A. Carone, Chairman, Capital Committee, SIA (June 12, 1992).

[9] 15 U.S.C. 78q–1 (1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–OCC–92–31 and should be submitted by January 11, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30783 Filed 12–17–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

[Public Notice 1738]

Policy Governing Munitions Export Licenses to Cyprus

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Notice is hereby given that all licenses and other approvals to export or otherwise transfer defense articles or defense services to any of the armed forces on Cyprus (except to the United Nations Forces in Cyprus—UNFICYP) are being denied pursuant to section 38 and 42 of the Arms Export Control Act.

EFFECTIVE DATE: November 18, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: It is the policy of the U.S. Government to deny all applications for licenses and other approvals to export or otherwise transfer defense articles and services to any of the armed forces in Cyrpus. The U.S. Government opposes such exports because of their ability to contribute to an arms race on the island and hinder U.N. and U.S. efforts to reach a fair and permanent settlement of the Cyprus dispute. This action does not affect exports of defense articles or defense services for the United Nations Forces in Cyprus (UNDICYP) or for civilian end-users.

The licenses and approvals that are affected include manufacturing licenses, technical assistance agreements, technical data, and commercial military exports of any kind involving any of the armed forces on Cyprus subject to the Arms Export Control Act. This action also affects the use in connection with Cyprus of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2778, 2791) and § 126.7 of the ITAR in furtherance of the foreign policy of the United States.

In accordance with §§ 126.3 and 126.7 of the ITAR, affected U.S. persons desiring review of this decision with regard to a particular export may petition the Director, Office of Defense Trade Controls.

Dated: December 9, 1992.

Robert L. Gallucci,

Assistant Secretary, Bureau of Politico-Military Affairs, Department of State.

[FR Doc. 92–30754 Filed 12–17–92; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice 1737]

Suspension of Munitions Export Licenses to Liberia

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Notice is hereby given that all licenses and other approvals to export or otherwise transfer defense articles or defense services to Liberia, other than articles or services destined for the sole use of the peace-keeping forces of ECOWAS, are suspended until further notice pursuant to sections 38 and 42 of the Arms Export Control Act.

EFFECTIVE DATE: December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: Effective immediately, it is the policy of the U.S. Government to deny all applications for licenses and other approvals to export or otherwise transfer defense articles and services to Liberia. In addition, U.S. manufacturers and exporters and any other affected parties are hereby notified that the Department of State has suspended all previously issued licenses and approvals authorizing the export or other transfer of defense articles or defense services to Liberia. This action has been taken in accordance with U.N. Security Council Resolution 788 instituting a general and complete embargo on all deliveries of weapons and military equipment to Liberia. This action does not apply to weapons and military equipment destined for the sole use of the peace-keeping forces of ECOWAS in Liberia, including weapons and military equipment destined for constituent members of the ECOWAS peace-keeping forces.

The licenses and approvals that have been suspended include any manufacturing licenses, technical assistance agreements, technical data, and commercial military exports of any kind subject to the Arms Export Control Act involving Liberia. This action also precludes the use in connection with Liberia of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2778, 2791) and § 126.7 of the ITAR.

Dated: December 9, 1992.

Robert L. Gallucci,

Assistant Secretary, Bureau of Politico-Military Affairs, Department of State.

[FR Doc. 92-30755 Filed 12-17-92; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8-92-33]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, January 19, 1993, in the 29th floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, Louisiana at 9 a.m. The agenda for the meeting consists of the following items:

1. Call to order.
2. Minutes of the October 20, 1992 meeting.
3. Old Business.
4. New Business.
5. Report from the VTS Subcommittee.
6. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting this waterway.

All meetings are open to the public. Members of the public may present written or oral statements at the meetings.

Additional information may be obtained from Mr. M. M. Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: December 11, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 92-30786 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

[Docket No. 92-44; Notice 2]

Determination that Nonconforming 1990 Mercedes-Benz 190E Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1990 Mercedes Benz 190E passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1990 Mercedes Benz 190E passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S. certified version of the 1990 Mercedes Benz 190E), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of December 18, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. section 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

(i) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Liphardt & Associates of Ronkonkoma, New York (Registered Importer No. R-90-004) petitioned NHTSA to determine whether 1990 Mercedes Benz 190E passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 18, 1992 (57 FR 43284) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #22 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1990 Mercedes Benz 190E (Model ID 201.024) that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards is substantially similar to a 1990 Mercedes Benz 190E (Model ID 201.028) that was originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and that it is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 9, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-30747 Filed 12-17-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 14, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0068.
Form Number: CF–28.
Type of Review: Extension.
Title: Request for Information.
Description: Customs Form 28 is used to request additional information from importers if sufficient information is not provided on the invoice or entry documentation for Customs to carry out their responsibilities.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 60,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 40,020 hours.
Clearance Officer: Ralph Meyer (202) 927–1552; U.S. Customs Service; Paperwork Management Branch; room 6316; 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880; Office of Management and Budget; room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–30760 Filed 12–17–92; 8:45 am]
BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

December 14, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0023.
Form Number: IRS Form 720.
Type of Review: Revision.
Title: Quarterly Federal Excise Tax Return.
Description: Form 720 is used to report excise taxes due from retailers and manufacturers on the sale or manufacture of various articles, to report taxes on facilities and services, and taxes on certain products and commodities (gasoline and vaccines, etc.). It enables IRS to monitor excise tax liability for various categories on a single form and to collect the tax quarterly in compliance with the law and regulations (IRC section 6011).
Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 326,900.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Record-keeping	Learning about the law or the form	Preparing and sending the form to the IRS
720	12 hr., 55 min..	1 hr., 35 min..	6 hr., 38 min.
Schedule A.	2 hr., 23 min..	.....	2 min.

Frequency of Response: Quarterly.
Estimated Total Reporting/Recordkeeping Burden: 7,665,557 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 92–30762 Filed 12–17–92; 8:45 am]
BILLING CODE 4830–01–M

Fiscal Service

[Dept. Circ. 570, 1992 Rev., Supp. 7]

Surety Companies Acceptable on Federal Bonds; Cumberland Surety Insurance Company, Inc.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1992 Revision, on page 29368 to reflect this addition:

Cumberland Surety Insurance Company, Inc. Business Address: 367 West Short Street, Lexington, KY 40507.

Underwriting Limitation b: $489,000. Surety licenses c: KY, IN. Incorporated in: Kentucky.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6850.

Dated: December 11, 1992.

Charles F. Schwan, III,
Director, Funds Management Division, Financial Management Service.
[FR Doc. 92–30756 Filed 12–17–92; 8:45 am]
BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Islamic Culture and Civilization Today Program

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the U.S. Information Agency (USIA) seeks a non-profit organization to assist in the administration of the FY 1993 Fulbright "Islamic Culture and Civilization Today" program. The organization, in cooperation with USIA, shall solicit and receive applications from faculty of colleges, universities and community colleges in the U.S. The organization also shall coordinate the competitive review of technically eligible

applications and provide panel recommendations and assessments on each application based on academic criteria to be provided by USIA.

The Islamic Culture and Civilization Today program shall support a seminar in a country with a substantial Muslim population. Interested organizations may propose to develop and administer a seminar of up to four to six weeks beginning June 1994 in one of the following countries: Egypt, Jordan, Morocco, Tunisia, Yemen, or Pakistan. The seminar should be conducted in English for up to 12 U.S. faculty who are neither area nor Islamic studies specialists. Participants must be U.S. citizens with limited or no previous experience in the area but whose teaching or other professional responsibilities relate in some degree to the Islamic world. The seminar shall examine the political, social, economic, educational, and cultural institutions of the subject country, in light of its recent history and current development.

The seminar shall be interdisciplinary and the sessions led by experts in fields concerned with seminar topics and who are resident in the subject country. The seminar may include sessions or meetings in various locales within the subject country, as well as visits to relevant institutions in the country. The organization shall publicize the opportunity among and accept applications from faculty of social sciences and humanities, such as history, religious studies, political science, art, geography. A Ph.D. shall be generally required and candidacy restricted to applicants who hold full-time teaching appointments.

DATES: Deadline for proposals: All copies must be received at USIA by 5 p.m. Washington, DC, time on March 12, 1993. Faxed documents will not be accepted, nor will documents postmarked on March 12, 1993, but received at a later date. It is the responsibility of each organization to ensure that proposals are received by USIA by the above deadline. Grants should begin September 1, 1993, and run through August 31, 1994.

ADDRESSES: The original and fourteen (14) copies of the completed application, including required forms, should be submitted by the deadline to U.S. Information Agency, Islamic Culture and Civilization Today, Office of Grants Management (E/XE), room 336, 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION: Interested organizations should contact Mr. Michael B. Graham, Near East/South Asia Academic Exchange Programs (E/AEN), U.S. Information Agency, room 212, 301 Fourth Street, SW., Washington, DC 20547 (Tel. 202-619-5368), to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing a proposal, including specific budget preparation information.

SUPPLEMENTARY INFORMATION:

Overview

Authority for this activity is the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256 (Fulbright-Hays Act). Through the Fulbright program and other academic exchange activities, USIA seeks to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Eligibility

Non-profit organizations with experience in international exchange, such as educational and professional organizations and institutions, American overseas research centers, colleges and universities, are invited to submit proposals for a USIA cooperative agreement.

Guidelines

In preparing a proposal, organizations should address the subjects of program design and scheduling, as well as program administration. At a minimum, a successful proposal should clearly cover publicity, logistical and scheduling measures. A plan for post-seminar follow-up evaluation and reporting must also be submitted.

Proposed Budget

A comprehensive line item budget not to exceed $100,000 must be submitted with the proposal. Not more than 20 percent of the proposed total cost to USIA may be for administrative and overhead expenses. Specific guidelines for budget preparation are included in the application material available from USIA. (Grants awarded to eligible organizations with less than four years experience conducting international exchange activities will be limited to $60,000. Budget submissions from such organizations cannot exceed this amount.)

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the USIA Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for awarding a grant resides with USIA's Office of Contracts.

Review Criteria

Technically eligible proposals for this competition will be reviewed according to the following criteria and funding will be allocated on the basis of the degree to which the criteria are met:

1. Quality/responsiveness—Quality of administrative plan and adherence of the proposed activity to the criteria and conditions described in the application material available from USIA. Proposals should clearly demonstrate how the organization will meet the program's objectives and plan.
2. Institutional capacity—Proposed personnel and institutional resources to be applied to the project should be adequate and appropriate to achieve all goals and objectives.
3. Cost-effectiveness—The overhead and administrative components of the proposal, including salary/benefits, cannot exceed 20 percent of the total funds requested from USIA. All budget items should be necessary and appropriate. Proposals should demonstrate cost-sharing and in-kind support.
4. Track record/potential—Proposals should demonstrate potential for excellence and/or a track record of the organization's involvement in international education, particularly academic exchange.
5. Evaluation plan—Proposals should provide a plan for follow up and evaluation by the grantee organization.
6. Reasonableness, feasibility, flexibility—Proposals should demonstrate how the objectives will be met.
7. Multiplier effect/impact—A particular priority is that the seminar strengthen long-term mutual understanding, include maximum sharing of information and views among participants, and provide opportunities to facilitate the establishment of broader institutional and individual scholarly ties for collaborative teaching and research in the U.S. and the subject country.

8. Mutuality of benefits—Proposals should show evidence of strong mutual benefits to the U.S. and foreign institutions and individuals involved, as well as evidence of strong commitment to the goals of the program.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review of full proposals on or about May 7, 1993. Grant awards will be subject to periodic reporting and evaluation requirements.

Dated: December 14, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-30682 Filed 12-17-92; 8:45 am]

BILLING CODE 8230-01-M

Postdoctoral Foreign Language and Area Studies—U.S. Scholars; Request for Prospectuses

AGENCY: United States Information Agency.

ACTION: Notice; request for prospectuses.

SUMMARY: The Bureau of Educational and Cultural Affairs of the U.S. Information Agency (USIA) seeks prospectuses from non-profit organizations for programs or projects under the rubric of the FY 1993 "Near and Middle East Research and Training" program. USIA will evaluate the prospectuses to identify organizations that will be invited to submit full proposals for further consideration.

Organizations shall conceive, develop and administer in cooperation with USIA activities that will assist American scholars in Near and Middle East studies. Activities permitted under this program include foreign language training, foreign area studies and foreign area research for periods ranging from two months to a full academic year abroad.

A total of $1 million will be made available through this competition. USIA expects to make up to 10 awards ranging from $100,000 to $500,000 each. Organizations that are awarded funding shall solicit and receive applications from American scholars nationwide who seek to conduct overseas study and research on the Near and Middle East and have little or no previous experience in the region. The organizations also shall coordinate the competitive review of technically eligible scholar applications and provide panel recommendations and assessments based on academic criteria to be provided by USIA.

Eligible fields of study and research shall be open to scholars of all disciplines with a need or established interest in topics requiring study or research abroad in the Near and Middle East. However, special emphasis will be given to social sciences and humanities. Eligibility shall be restricted to applicants who have a Ph.D. degree and who have postdoctoral college or university teaching experience.

For the purposes of this program, the Near and Middle East refers to the region consisting of countries and peoples covered by the Bureau of Near Eastern Affairs of the U.S. Department of State. Currently eligible locales for study overseas are Mauritania, Morocco, Algeria, Tunisia, Egypt, Israel, Jordan, Syria, Saudi Arabia, Kuwait, United Arab Emirates, Bahrain, Qatar, and Yemen.

DATES: Deadline for submissions: All copies must be received at USIA by 5 p.m. Washington, DC, time on Thursday, February 11, 1993. Faxed documents will not be accepted, nor will documents postmarked on February 11, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that submissions are received by USIA by the above deadline. Grants should begin September 1,1993, and may last for up to 24 months.

ADDRESSES: The original and ten (10) copies of the prospectus should be submitted by the deadline to U.S. Information Agency, Postdoctoral Foreign Language and Area Studies—U.S. Scholars, Office of Grants Management (E/XE), room 336, 301 Fourth Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION: Interested organizations should contact Dr. Jerry Brennig, Chief, Near East/South Asia Branch, Academic Exchange Programs Division (E/AEN), U.S. Information Agency, room 212, 301 Fourth Street SW., Washington, DC 20547 (Tel. 202-619-6864), for further information if needed.

SUPPLEMENTARY INFORMATION:

Overview

Authority for this activity is the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256 (Fulbright-Hays Act). Through the Fulbright program and other exchange activities, USIA seeks to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Eligibility

Non-profit organizations with experience in international academic exchange activities, such as educational and professional organizations and institutions, American overseas research centers, colleges and universities, are invited to apply.

Guidelines

No application material from USIA is necessary to prepare a prospectus for this competition. In preparing prospectuses, organizations should address the subjects of program design and scheduling, as well as program administration. At a minimum, a successful prospectus should clearly cover publicity, logistical and scheduling measures. A basis plan for post-program follow-up evaluation should also be included. The prospectus must be typewritten and double-spaced, and cannot exceed ten pages, including budget attachment.

Proposed Budget

A one-page budget not to exceed $500,000 must be submitted as part of the prospectus. Not more than 20 percent of the proposed total cost to USIA may be for administrative and overhead expenses. USIA does not award grants of greater than $60,000 to organizations with less than four years experience conducting international exchange programs. Submissions from such organizations cannot be considered technically eligible for the purposes of this program.

Review Process

USIA will acknowledge receipt of all prospectuses and will review them for technical eligibility. Prospectuses will be deemed ineligible if they do not adhere to the guidelines established herein. Eligible submissions will be

forwarded to panels of USIA officers for advisory review. All eligible submissions will also be reviewed by the appropriate geographic area office. Invitations to submit a full proposal are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for awarding a grant resides with USIA's Office of Contracts.

Review Criteria

Technically eligible prospectuses will be competitively reviewed according to the following criteria:

1. Quality/responsiveness—Quality of administrative plan and adherence of the proposed activity to the criteria and conditions described herein. Prospectuses should demonstrate how the organization will meet the program's objectives and plan.
2. Institutional capacity—Proposed personnel and institutional resources to be applied to the project should be adequate and appropriate to achieve all goals and objectives.
3. Cost-effectiveness—The overhead and administrative components of the costs to USIA, including salary/benefits, cannot exceed 20 percent of the total budget. Prospectuses should demonstrate cost-sharing and in-kind support.
4. Track record/potential—Submissions should demonstrate potential for excellence or a track record of the organization's involvement in international programs, particularly academic exchange.
5. Evaluation plan—Prospectuses should provide for follow up and evaluation by the grantee organization.
6. Reasonableness, feasibility, flexibility—Prospectuses should demonstrate how the objectives will be met.
7. Multiplier effect/impact—A particular priority is that the program strengthen long-term mutual understanding, include maximum sharing of information and views by participants with host country counterparts, and provide opportunities to facilitate the establishment of broader institutional and individual scholarly ties in the U.S. and the host country.
8. Mutuality of benefits—Prospectuses should show evidence of strong mutual benefits to the institutions and individuals involved, as well as evidence of strong commitment to the goals of the program.

Notice

The terms and conditions published in this announcement are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this announcement does not constitute an award commitment on the part of the U.S. Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review of prospectuses on or about March 15, 1993. Invitations and application material needed to submit a full proposal also will be issued at that time, with submissions due at USIA on or about April 30, 1993. Grant awards will be subject to standard periodic reporting and evaluation requirements.

Dated: December 14, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-30759 Filed 12-17-92; 8:45 am]

BILLING CODE 8230-01-M

Predoctoral Foreign Language and Area Studies—U.S. Students

AGENCY: United States Information Agency.

ACTION: Notice—request for prospectuses.

SUMMARY: The Bureau of Educational Cultural Affairs of the U.S. Information Agency (USIA) seek prospectuses from non-profit organizations for programs or projects under the rubric of the FY 1993 "Near and Middle East Research and Training" program. USIA will evaluate the prospectuses to identify organizations that will be invited to submit full proposals for further consideration.

Organizations shall conceive, develop and administer in cooperation with USIA activities to assist American students in Near and Middle East studies. Activities permitted under this program include foreign language training, foreign area studies and foreign area research for periods ranging from a semester to a full academic year abroad.

A total of $1 million will be made available through this competition. USIA expects to make up to 10 awards ranging from $100,000 to $500,000 each. Organizations that are awarded funding shall solicit and receive applications from American students nationwide who seek to conduct overseas study and research on the Near and Middle East. The organizations also shall coordinate the competitive review of technically eligible student applications and provide panel recommendations and assessments based on academic criteria to be provided by USIA.

Eligible fields of study and research shall be open to students of all disciplines with a need or established interest in topics requiring study or research abroad in the Near and Middle East. However, special emphasis will be given to social sciences and humanities. Eligibility shall be restricted to applicants who have a baccalaureate degree and who are already enrolled in graduate-level academic programs.

For the purposes of this program, the Near and Middle East refers to the region consisting of countries and peoples covered by the Bureau of Near Eastern Affairs of the U.S. Department of State. Currently eligible locales for study overseas are Mauritania, Morocco, Algeria, Tunisia, Egypt, Israel, Jordan, Syria, Saudi Arabia, Kuwait, United Arab Emirates, Bahrain, Qatar, and Yemen.

DATES: Deadline for submissions: All copies must be received at USIA by 5 p.m. Washington, DC, time on Thursday, February 11, 1993. Faxed documents will not be accepted, nor will documents postmarked on February 11, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that submissions are received by USIA by the above deadline. Grants should begin September 1, 1993, and may last for up to 24 months.

ADDRESSES: The original and ten (10) copies of the prospectus should be submitted by the deadline to U.S. Information Agency, Predoctoral Foreign Language and Area Studies—U.S. Students, Office of Grants Management (E/XE), room 336, 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION: Interested organizations should contact Dr. Jerry Brennig, Chief, Near East/South Asia Branch, Academic Exchange Programs Division (E/AEN), U.S. Information Agency, room 212, 301 Fourth Street, SW., Washington, DC 20547 (Tel. 202-619-6364), for further information if needed.

SUPPLEMENTARY INFORMATION:

Overview

Authority for this activity is the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256.

(Fulbright-Hays Act). Through the Fulbright program and other exchange activities, USIA seeks to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau's authorizing legislation,

programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Eligibility

Non-profit organizations with experience in international academic exchange activities, such as educational and professional organizations and institutions, American overseas research centers, colleges and universities, are invited to apply.

Guidelines

No application material from USIA is necessary to prepare a prospectus for this competition. In preparing prospectuses, organizations should address the subjects of program design and scheduling, as well as program administration. At a minimum, a successful prospectus should clearly cover publicity, logistical and scheduling measures. A basic plan for post-program follow-up evaluation should also be included. The prospectus must be typewritten and double-spaced, and cannot exceed ten pages, including budget attachment.

Proposed Budget

A one-page budget not to exceed $500,000 must be submitted as part of the prospectus. Not more than 20 percent of the proposed total cost to USIA may be for administrative and overhead expenses. USIA does not award grants of greater than $60,000 to organizations with less than four years experience conducting international exchange programs. Submissions from such organizations cannot be considered technically eligible for the purposes of this program.

Review Process

USIA will acknowledge receipt of all prospectuses and will review them for technical eligibility. Prospectuses will be deemed ineligible if they do not adhere to the guidelines established herein. Eligible submissions will be forwarded to panels of USIA officers for advisory review. All eligible submissions will also reviewed by the appropriate geographic area office. Invitations to submit a full proposal are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for awarding a grant resides with USIA's Office of Contracts.

Review Criteria

Technically eligible prospectuses will be competitively reviewed according to the following criteria:

1. Quality/responsiveness—Quality of administrative plan and adherence of the proposed activity to the criteria and conditions described herein. Prospectuses should demonstrate how the organization will meet the program's objectives and plan.

2. Institutional capacity—Proposed personnel and institutional resources to be applied to the project should be adequate and appropriate to achieve all goals and objectives.

3. Cost-effectiveness—The overhead and administrative components of the costs to USIA, including salary/benefits, cannot exceed 20 percent of the total budget. Prospectuses should demonstrate cost-sharing and in-kind support.

4. Track record/potential—Submissions should demonstrate potential for excellence or a track record of the organization's involvement in international programs, particularly academic exchange.

5. Evaluation plan—Prospectuses should provide for follow up and evaluation by the grantee organization.

6. Reasonableness, feasibility, flexibility—Prospectuses should demonstrate how the objectives will be met.

7. Multiplier effect/impact—A particular priority is that the program strengthen long-term mutual understanding, include maximum sharing of information and views by participants with host country counterparts, and provide opportunities to facilitate the establishment of broader institutional and individual scholarly ties in the U.S. and the host country.

8. Mutuality of benefits—Prospectuses should show evidence of strong mutual benefits to the institutions and individuals involved, as well as evidence of strong commitment to the goals of the program.

Notice

The terms and conditions published in this announcement are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this announcement does not constitute an award commitment on the part of the U.S. Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applications will be notified of the results of the review of prospectuses on or about March 15, 1993.

Invitations and application material needed to submit a full proposal also will be issued at that time, with submissions due at USIA on or about April 30, 1993. Grant awards will be subject to standard periodic reporting and evaluation requirements.

Dated: December 14, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-30758 Filed 12-17-92; 8:45 am]

BILLING CODE 8230-01-M

International Educational and Cultural Activities Discretionary Grant Program

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a discretionary grants program for private, non-profit organizations in support of projects that link their international exchange interests with counterpart institutions/groups in ways supportive of the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals.

ANNOUNCEMENT NUMBER: The Announcement Number is E/P-93-6. Please refer to this number in all correspondence or telephone calls to the Agency.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, February 26, 1993. Faxed documents will not be accepted, nor will documents postmarked on February 26, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through February 26, 1993, for projects whose activities will begin between July 1, 1993, and December 31, 1993.

ADDRESSES: The original and *14* copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: E/P Discretionary Grant Competition, Office of Grants Management (E/XE), 301 4th Street, SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen

Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619-5348, to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: The Office of Citizen Exchanges of the United States Information Agency announces a program to encourage, through limited awards to non-profit institutions, increased private sector commitment to and involvement in international exchanges. Awarding of any and all grants is contingent upon the availability of funds.

The Office of Citizen Exchanges works with U.S. private sector non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures; and international interests. The Office supports international projects in the United States or overseas involving leaders or potential leaders in the following fields and professions: Urban planners, jurists, specialized journalists (specialists in economics, business, political analysis, international affairs), business professionals, environmental specialists, parliamentarians, educators, economic planning and other government officials.

Applicants should carefully note the following restrictions/recommendations for proposals in specific geographical areas:

The Newly Independent States: USIA and other agencies of the U.S. government have numerous programs in the countries of the NIS (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). As such, the amount of funds for that part of the world in this competition will be extremely limited. Proposals which would normally be considered for other USIA grant competitions will not be accepted. E/P encourages organizations to seek clarification on these points before presenting a proposal.

Europe, Eastern Europe, and the Baltics (EU): Projects are encouraged involving Western Europe. Due to the fact that the office has or is in the process of conducting specific competitions in Eastern Europe and the Baltics, we will not accept proposals for youth exchange programs or for programs in the following thematic areas: Public administration, business management, independent media development, journalism training, and local government administration and municipal management.

East Asia and the Pacific (EA): Except where noted elsewhere in this announcement, there are no country or thematic restrictions for this geographic region, which also includes Mongolia, Indochina, and the Pacific Islands.

American Republics (AR): Except where noted elsewhere in this announcement, there are no country or thematic restrictions for this geographic region. However, priority will be given to projects in the following areas: Strengthening of democracy, economic reform, free markets, journalism, administration of justice, civil/military relations, and good governance.

Africa (AF): Except where noted elsewhere in this announcement, there are no country or thematic restrictions for this geographic region.

North Africa, Near East and South Asia (NEA): Except where noted elsewhere in this announcement, there are no country or thematic restrictions for this geographic region. However, priority will be given to projects which promote democratization, free markets, tolerance and pluralism, and conflict resolution.

The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; i.e., clerical work, auto maintenance, etc. and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, should be balanced and representative of the diversity of American political, social and cultural life.

The Office does not support proposals limited to conferences or seminars (i.e., one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope which is receiving USIA funding from this competition. USIA-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas.

The themes addressed in exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including where applicable the expected yield of any associated conference.

No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. USIS post consultation by applicants, prior to submission of proposals, is strongly recommended for all programs.

Additional Guidelines and Restrictions

Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register**.

For projects that would begin after December 31, 1993, competition details will be announced in the **Federal Register** on or about June 1, 1993. Inquiries concerning technical requirements are welcome prior to submission of applications.

Selection of Participants

A project proposal should clearly describe the type of person who will participate in the program and for what reasons. The process by which participants will be selected initially should be described (e.g., nominations from employers, open competition, applications, interviews, etc.)

In the selection of foreign participants, USIA and USIS and American Embassies retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions will often provide support,

as requested by USIA, in the nomination of participants. The grantee institution will also provide the names of American participants and brief biographical data to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously travelled to the United States.

Application Requirements

Proposals must be structured as outlined in the application package. Confirmation letters from American and foreign co-sponsors noting their intention to participate in the program will enhance an institution's submission.

Funding

Competition for USIA funding is keen. The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, and ability to carry out the program successfully. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Proposals with cost sharing of less than 33 percent of the total project cost will be considered ineligible. USIA-funded administrative costs are limited to twenty (20%) percent of the total funds requested from USIA. Administrative costs are defined as salaries for grantee organization employees, benefits, other direct and indirect costs incurred in the United States. Overseas administrative costs—such as compensation of an employee in an overseas office—are not counted in this 20 percent limit. Important note for universities: The U.S. Information Agency's Bureau of Educational and Cultural Affairs defines American faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

A proposal's cost-effectiveness—including in-kind contributions and ability to keep administrative costs low—is a major consideration in the review process. Although no set funding limit exists, proposals for less than $150,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to grants of $60,000.

The Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contract offices. Proposals may also be reviewed by the Agency's Office of General Counsel.

Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to the availability of funds.

Review Criteria

USIA will evaluate proposals based on the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality and substance. Their rationale should persuade the reader that the U.S. taxpayer's dollar is being well-spent for a clearly defined need.

2. *Institution Reputation/Ability:* Institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG) will be considered.

3. *Project Personnel:* Personnel's professional and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal.

4. *Thematic Expertise:* Proposal should demonstrate the organization's expertise in the subject area.

5. *Program Planning:* Detailed agenda and work plan should demonstrate substance and logistical capacity.

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. *Ability to Achieve Program Objectives:* Objectives should be realistic and obtainable. Proposal should clearly demonstrate how the grantee institution will meet the program's objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional ties.

9. *Cost-Effectiveness:* The overhead and administrative components should be as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should show cost-sharing through other private sector support as well as direct funding contributions and in-kind support from the prospective grantee institution.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-funded programs are not one-time events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. This Office of Citizen Exchanges encourages project proposals involving more than one country. However, single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and pre-selected participants will also be subject to USIS post review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and

committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 14, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-30683 Filed 12-17-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 244
Friday, December 18, 1992

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 FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 F.R. 57864.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, December 29, 1992.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has cancelled the meeting previously announced to discuss a Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–30863 Filed 12–16–92; 3:53 pm]

BILLING CODE 6351–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: (Times listed below), Tuesday, December 22, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

10:00 a.m.

1. Pride in Public Service

The Commission will present the Pride in Public Service Award to December's recipient.

2. Election of Vice Chairman

The Commission will elect a Vice Chairman for a term ending on December 31, 1993.

3. ANPR on Sleepwear

The Commission will consider an Advance Notice of Proposed Rulemaking (ANPR) to amend the standards for flammability of children's sleepwear to exempt close fitting garments and garments intended for infants.

4. Charcoal Container Labeling, Petition HP 91–1

The Commission will consider petition HP 91–1 from Barbara Muak requesting changes to the labeling requirements for containers of charcoal.

2:00 p.m.

5. Voluntary Standards/International Affairs

The staff will brief the Commission on voluntary standards and international affairs activities carried out by staff during the fourth quarter of fiscal year 1992.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: December 15, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–30867 Filed 12–16–92; 3:54 pm]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:04 a.m. on Tuesday, December 15, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in my Acting Chairman Andrew C. Hove, Jr., and Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting on less than seven days' notice to the public, of the following matter:

Report on the status of pending regulations to be issued pursuant to the Federal Deposit Insurance Corporation Improvement Act of 1991.

By the same majority vote, the Board further determined that no notice earlier than December 11, 1992, of this change in the subject matter of the meeting was practicable.

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

Dated: December 15, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–30847 Filed 12–16–92; 10:42 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 11:39 a.m. on Tuesday, December 15, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., and Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Matters relating to an assistance agreement with an insured institution.

Recommendation concerning certain financial institutions.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 15, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–30848 Filed 12–16–92; 10:42 am]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 58858, Friday, December 11, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m. Wednesday, December 16, 1992.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

Implementation of section 7(e)(7) of the International Banking Act: Guidelines for Foreign Banks.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: December 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-30835 Filed 12-15-92; 5:04 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 57, No. 244
Friday, December 18, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93-143-000, et al]

Consolidated Edison Company of New York, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 92-28743 beginning on page 56331 in the issue of Friday, November 27, 1992 make the following correction:

On page 56333, in the first column, under item 11., the docket number is corrected to read as follows:

[Docket No. ER92-635-000]

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-234-AD; Amdt. 39-8357; AD 92-18-12]

Airworthiness Directives; Boeing 747 Series Airplanes

Correction

Due to errors in the original publication of rule document 92-24750 beginning on page 46769 in the issue of Tuesday, October 13, 1992, the airworthiness directive beginning on page 46770 is republished in its entirety as follows:

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8011 (56 FR 51232, October 11, 1991), and by adding a new airworthiness directive (AD), amendment 39-8357, to read as follows:

92-18-12 Boeing: Amendment 39-8357. Docket No. 91-NM-234-AD. Supersedes AD 91-18-08, Amendment 39-8011.

Applicability: Model 747 series airplanes, equipped with brake part numbers (P/N) identified in paragraphs (a) and (b) of this AD, certificated in any category.

Compliance required as indicated, unless previously accomplished.

To prevent loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after November 12, 1991 (the effective date of Amendment 39-8011, AD 91-18-08), incorporate the maximum brake wear limits, shown below, into the FAA-approved maintenance inspection program:

Brake mfr.	Brake P/N	Boeing P/N	Maximum wear limit (inches)
Bendix	2603703-13	60B10014-9	1.55
Bendix	2603703-14	60B10014-11	1.55
Bendix	2605662-1	60B10014-15	2.50
Bendix	2605662-3	60B10014-23	2.70
BFGoodrich	2-1515-1	60B10062-11	2.00
BFGoodrich	2-1515-2	60B10062-12	2.00

(b) Within 180 days after the effective date of this AD, accomplish the requirements specified in paragraph (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), or (b)(6) of this AD, as applicable:

(1) For airplanes equipped with Bendix Part Numbers (P/N) 2602012-2, -3, -4, and -5, (Boeing P/N 60B00150-5, -6, -8, and -12):

(i) Inspect each brake to ensure it is not worn more than 1.75 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with a Bendix Brake P/N 2602012-30, -40, or -50, (Boeing P/N 60B00150-21, -22, and -23), as applicable, built in accordance with Bendix Service Bulletin 2602012-32-001, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N's 2602012-30, -40, and -50 to the FAA-approved Airplane Flight Manual (AFM), Section 4, "Maximum Brake Energy Limit Speed," Category "B," and remove Bendix brake P/N's 2602012-2, -3, -4, and -5 from the AFM.

(iii) Intermix of the P/N 2602012-2, -3, -4, and -5 brakes with the P/N 2602012-30, -40 and -50 brakes is allowed for 360 days after the effective date of this AD. Delay removal of the P/N 2602012-2, -3, -4, and -5 brakes from the AFM, as required by paragraph (b)(1)(ii) of this AD, until intermix is ended.

(iv) Change all references of Bendix Brake P/N's 2602012-2, -3, -4, and -5 to Category "B" on the Maximum Brake Energy Chart in section 4 of the AFM.

(v) Incorporate a 1.75-inch maximum allowable brake wear limit for Bendix brake P/N's 2602012-30, -40 and -50 into the FAA-approved maintenance inspection program.

(2) For airplanes equipped with Bendix Brake P/N's 2601902-1, -2, and -5, (Boeing P/N's 60B00150-4, -9, and -13): Incorporate a 2.38-inch maximum allowable brake wear limit into the FAA-approved maintenance inspection program.

(3) For airplanes equipped with Bendix Brake P/N's 2601902-3, -4, and -6, (Boeing P/N's 60B00150-10, -11, and -14):

(i) Inspect each brake to ensure it is not worn more than 1.73 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with a Bendix Brake P/N 2601902-30, -40, or -60, (Boeing P/N's 60B00150-24, -25, and -26), as applicable, built in accordance with Bendix Service Bulletin 2601902-32-001, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N's 2601902-30, -40, and -60 to the AFM, Section 4, "Maximum Brake Energy Limit Speed," Category "C."

(iii) Intermix of the P/N 2601902-3, -4, and -6 brakes with the P/N 2601902-30, -40, and -60 brakes is allowed for 360 days after the effective date of this AD when a 1.73-inch maximum allowable brake wear limit removal criteria is used for these brakes.

(iv) Move Bendix Brake P/N's 2601902-3, -4, and -6 from Category "C" to Category "B" in the AFM, Section 4, "Maximum Brake Energy Limit Speed." If intermixing is used, delay movement of these brakes to Category "B" until intermixing is ended.

(v) Change all references of Bendix P/N's 2601902-3, -4, and -6 to Category "C" on the Maximum Brake Energy Chart in section 4 of the AFM.

(vi) Incorporate a 2.38-inch maximum allowable brake wear limit for Bendix Brake P/N's 2601902-3, -4, and -6, and a 1.73-inch maximum allowable brake wear limit for P/N's 2601902-30, -40, and -60, into the FAA-approved maintenance inspection program.

(4) For airplanes equipped with Bendix Brake P/N 2605662-2, (Boeing P/N 60B10014-14):

(i) Inspect each brake to ensure that it is not worn more than 1.73 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with Bendix Brake P/N

2605662–20, (Boeing P/N 60B10014–30), built in accordance with Bendix Service Bulletin 2605662–32–028, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N 2605662–20 to the AFM, Section 4, "Maximum Brake Energy Limit Speed," Category "C."

(iii) Intermix of the P/N 2605662–2 brakes with the P/N 2605662–20 brakes is allowed for 360 days after the effective date of this AD when a 1.73-inch maximum allowable ware limit removal criteria is used for these brakes.

(iv) Move Bendix Brake P/N 2605662–2 from Category "C" to Category "B" in the AFM, Section 4, "Maximum Brake Energy Limit Speed." If intermixing is used, delay movement of these brakes to Category "B" until intermix is ended.

(v) Change all references of Bendix P/N 2605662–2 to Category "C" on the Maximum Brake Energy Chart in section 4 of the AFM.

(vi) Incorporate a 2.38-inch maximum allowable brake wear limit for Bendix Brake P/N 2605662–2, and a 1.73-inch maximum allowable brake wear limit for P/N 2605662–20, into the FAA-approved maintenance inspection program.

(5) For airplanes equipped with Bendix Brake P/N 2605155–1, (Boeing P/N 60B10014–10):

(i) Inspect each brake to ensure that it is not worn more than 2.50 inches. Any brake worn more than this limit must be replaced, prior to further flight, with a brake within this limit; or with Bendix Brake P/N 2605155–2, (Boeing P/N 60B10014–31), built in accordance with Bendix Service Bulletin 2605155–32–001, Revision 2, dated October 10, 1991.

(ii) Add Bendix Brake P/N 2605155–2 to the Airplane Flight Manual (AFM), Section 4, "Maximum Brake Energy Limit Speed," Category "C."

(iii) Intermix of the P/N 2605155–1 brakes with the P/N 2605155–2 brakes is allowed for 360 days after the effective date of this AD when a 2.50-inch maximum allowable wear limit removal criteria is used for these brakes.

(iv) Move Bendix Brake P/N 2605155–1 from Category "C" to Category "B" in the AFM, Section 4, "Maximum Brake Energy Limit Speed." If intermixing is used, delay movement of this brake to Category "B" until intermixing is ended.

(v) Change all references of Bendix P/N 2605155–1 to Category "C" on the Maximum Brake Energy Chart in section 4 of the AFM.

(vi) Incorporate a 3.20-inch maximum allowable brake wear limit for Bendix Brake P/N 2605155–1, and a 2.50-inch maximum allowable brake wear limit for P/N 2605155–2, into the FAA-approved maintenance inspection program.

(6) For airplanes equipped with Bendix Brake P/N 2605392–1, (Boeing P/N 60B10035–2): Incorporate a 1.90-inch maximum allowable brake wear limit into the FAA-approved maintenance inspection program.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

(d) 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.

(e) Brakes shall be built in accordance with Bendix Service Bulletin 2601902–32–001, Revision 2, dated October 10, 1991; Bendix Service Bulletin 2602012–32–001, Revision 2, dated October 10, 1991; Bendix Service Bulletin 2605155–32–001, Revision 2, dated October 10, 1991; or Bendix Service Bulletin 2605662–32–028, Revision 2, dated October 10, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allied-Signal Aerospace Company, Bendix Wheels and Brakes Division, South Bend, Indiana 46628. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 17, 1992.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[IA–20–92]

RIN 1545–AQ57

Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries Before the Internal Revenue Service

Correction

In proposed rule document 92–24347 beginning on page 46356 in the issue of Thursday, October 8, 1992, make the following corrections:

§ 10.3 [Corrected]

1. On page 46358, in the third column, in § 10.3(f), in the third line, "any" should read "an".

§ 10.7 [Corrected]

2. On page 46359, in the first column, in § 10.7(b), "*ruleaking*" should read "*rulemaking*".

3. On the same page, in the same column, in § 10.7(c), in the 10th line, "this" should read "his".

§ 10.53A [Corrected]

4. On page 46360, in the second column, in § 10.53A(b)(2), "on" should read "of".

BILLING CODE 1505–01–D

federal register

Friday
December 18, 1992

Part II

Department of Education

34 CFR Part 682

Federal Family Education Loan Programs; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840-AA96

Federal Family Education Loan Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Federal Family Education Loan (FFEL) programs. The new FFEL regulations will govern the Federal Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan programs. The Federal Stafford Loan, the Federal SLS, the Federal PLUS and the Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation programs. These programs complement key components of American 2000, the President's education strategy. The final regulations incorporate statutory changes made by the Consolidated Omnibus Budget Reconciliation Act of 1985 (enacted April 7, 1986) (COBRA) (Pub. L. 99-272), the Higher Education Amendments of 1986 (enacted October 17, 1986) (1986 Amendments) (Pub. L. 99-498), the Higher Education Technical Amendments Act of 1987 (enacted June 3, 1987) (Technical Amendments) (Pub. L. 100-50), Public Law 100-297 (enacted April 28, 1988), Public Law 100-369 (enacted July 18, 1988), the Omnibus Budget Reconciliation Act of 1989 (enacted December 19, 1989) (Pub. L. 101-239), the Omnibus Budget Reconciliation Act of 1990 (enacted November 5, 1990) (Pub. L. 101-508), the National and Community Service Act of 1990 (enacted November 16, 1990) (Pub. L. 101-610), the Higher Education Technical Amendments of 1991 (enacted April 9, 1991) (Pub. L. 102-26), one technical change required by the Emergency Unemployment Compensation Act of 1991 (enacted November 14, 1991) (Pub. L. 102-164), and changes to reflect self-implementing provisions of the Higher Education Amendments of 1992 (1992 Amendments) (enacted July 23, 1992) (Pub. L. 102-325). To the extent these regulations may be inconsistent with the 1992 Amendments, the 1992 Amendments supersede the regulations. The remainder of the provisions enacted as part of the 1992 Amendments will be addressed in separate proposed and final regulations developed under the requirements of negotiated rulemaking. The final regulations also establish various policy initiatives intended to improve program administration, prevent loan defaults, and generate repayment of defaulted loans.

EFFECTIVE DATE: Except as otherwise specified below, these regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 682.205, 682.206, 682.208, 682.209, 682.210, 682.211, 682.214, 682.301, 682.305, 682.401, 682.402, 682.404, 682.406, 682.407, 682.409, 682.410, 682.411, 682.412, 682.414, 682.507, 682.508, 682.511, 682.515, 682.601, 682.602, 682.603, 682.604, 682.605, 682.606, 682.610, 682.711, 682.712, 682.713, 682.802, 682.803, and appendix B. These sections 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.

Subject to approval under the Paperwork Reduction Act, if applicable, the following effective dates also apply to certain provisions of these regulations.

Section 682.302(d)(1)(v), which requires lenders to file default claims within 60 days after the date of default to retain eligibility for special allowance payments from the Secretary, is effective for loans on which the first day of delinquency is on or after 120 days of following the date of publication.

Section 682.302(d)(1)(vii), which requires a lender to resubmit within 30 days a default claim that has been returned to the lender by the guaranty agency due solely to inadequate documentation to maintain eligibility for special allowance, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

Section 682.401(d)(3), which requires a guaranty agency to use common forms approved by the Secretary is, with the exception of the common application form and promissory note, effective 360 days following the date of publication. Under the 1992 Amendments, the Secretary must approve a common application form and promissory note within 360 days after the enactment of that law.

Section 682.401(b)(17), which requires a guaranty agency to have a written agreement with each lender in its program, is effective 120 days following the date of publication.

Section 682.401(b)(18)(ii), which requires guaranty agencies to use the data elements and report format provided in appendix B for monitoring the enrollment status of student borrowers, is effective 120 days following the approval of this provision by OMB under the Paperwork Reduction Act of 1980.

Section 682.406(a)(3), which requires a lender to provide an accurate collection history and payment history to the guaranty agency with each default claim, is effective for loans that enter repayment on or after the effective date of these regulations.

Section 682.406(a)(6), which requires a lender to resubmit within 30 days a default claim that has been returned by the guaranty agency due solely to inadequate documentation for interest accruing beyond the 30th day to be reinsured, or to resubmit the claim within 60 days to maintain reinsurance on the loan, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

Section 682.406(a)(8), which requires that guaranty agencies must pay or reject a claim by the 60th day after a default claim is received for the interest accruing after the 60th day to be reinsured, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

Section 682.410(b)(4), which requires guaranty agencies to capitalize any interest due to the lender from the borrower at the time the guaranty agency pays the default claim, is effective for claims paid by the agency on or after 120 days following the date of publication.

Section 682.411, which defines the minimum due diligence requirements for lenders in the collection of guaranty agency loans, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Patricia Beavan or Pamela Moran, U.S. Department of Education, 400 Maryland Avenue, SW., room 4310, ROB 3, Washington, DC 20202-5449. Telephone: (202) 708-8242. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at

1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Stafford, SLS, and PLUS programs provide loans to eligible student or parent borrowers who might otherwise be unable to finance the costs of postsecondary education. The Consolidation Loan Program gives borrowers an opportunity to consolidate loans made under the Stafford loan, Perkins loan (formerly National Direct Student Loan), PLUS (for loans made to students prior to 1986), SLS, and Health Professions Student Loan programs.

On November 20, 1990, the Secretary published a notice of proposed rulemaking (NPRM) for the GSL programs in the Federal Register (55 FR 48324). Those proposed regulations did not reflect changes to the Higher Education Act of 1965, as amended, (the Act) authorizing legislation for the FFEL programs made after the enactment of Public Law 100-369 (July 18, 1988). These final regulations, however, now reflect the statutory changes made to the programs by the laws identified in the Summary, which include provisions that—

- Provide that an individual serving in a medical internship or residency program, except for an internship in dentistry, is ineligible to receive a Stafford or SLS loan (§ 682.201(a)(8));
- Prohibit a borrower who is serving in a medical internship or residency program, except for an internship in dentistry, from receiving or continuing a deferment of repayment on a Stafford or SLS loan based on the borrower's full-time or half-time study at a school (§ 682.210(c)(4));
- Require a lender to grant forbearance to a borrower who is serving in a medical internship or residency program and who already has received the maximum two-year internship deferment (§ 682.211(g));
- Provide that a student who does not have a high school diploma or recognized equivalent is ineligible to borrow an SLS loan (§ 682.201(a)(3)(ii);
- Provide that the proceeds of any Stafford or SLS loan must be disbursed in two or more installments regardless of the amount of the loan or the length of the period of enrollment for which the loan is made (§ 682.207(c)(1));
- Prohibit a lender or escrow agent from disbursing the second or any subsequent disbursement of a Stafford or SLS loan after it is informed by the student or institution that the student has ceased to be enrolled at the institution (§ 682.207(b)(1)(vi));
- Require an institution to withhold from the student and promptly return to the lender or escrow agent any Stafford or SLS disbursement not yet delivered to the student that exceeds the amount of assistance for which the student is eligible, taking into account other financial aid obtained by the student (§ 682.604(h));
- Require the student to provide the lender with a statement from the institution setting forth a disbursement schedule for the proceeds of a Stafford or SLS loan in installments (§ 682.207(b)(1)(B));
- Require that, for a student to be eligible to receive financial assistance authorized by Title IV of the Higher Education Act of 1965, as amended (the Act), a student who does not have a high school diploma or a recognized equivalent must pass an independently administered examination approved by the Secretary (§ 682.201(a)(7));
- Require guaranty agencies, upon request of a lender, to provide preclaims assistance on accounts that are less than 120 days delinquent and supplemental preclaims assistance on accounts that are delinquent at least 120 days (§ 682.411(h));
- Require guaranty agencies, upon the request of an eligible institution, to furnish information to the institution on borrowers who were enrolled at the institution and who have defaulted on their FFEL loans (§ 682.401(b)(22));
- Establish a minimum period for annual SLS loan eligibility that is the greater of the length of the institution's academic year or seven consecutive months (§ 682.204(e)(2));
- Prohibit an institution from delivering for endorsement the first installment of a Stafford or SLS loan to any student who is entering the first year of a program of undergraduate education at an institution, and who has not previously received a Stafford or SLS loan, until 30 days after the first day of the student's program of study (§ 682.604(c)(5));
- Extend the provision prohibiting the discharge of certain student loans to borrowers who file for relief under Chapter 13 of the Bankruptcy Code;
- Extend the 5-year period under which a Title IV loan generally may not be discharged in bankruptcy to 7 years (§ 682.402(d)(5)(B));
- Permit an institution to refuse to certify an otherwise eligible borrower's FFEL application, or to certify a loan for an amount that is less than what the student would be otherwise eligible for, as long as the reason for that action is documented and given to the student in writing (§ 682.603(e));
- Require an institution to review with the borrower during exit counseling the conditions under which the borrower may defer repayment of a loan because of service under the Peace Corps Act, the Domestic Volunteer Service Act of 1973, or for comparable full-time service as a volunteer in a tax-exempt organization (§ 682.604(g)(2)(vi));
- Eliminate any statutes of limitation that previously applied to enforcement action to collect FFEL loans;
- Prohibit a guaranty agency for retaining 35 percent of collections from defaulted borrowers obtained through a wage garnishment law that complied with section 428E of the Act, which was repealed by section 605(b)(1) of Pub. L. 102-164;
- Provide a reduced annual limit on SLS loans for a student in a program of study that is less than a full academic year in length (§ 682.204(e)(1));
- Prohibit an incarcerated student from borrowing under the FFEL program;
- Require an annual independent compliance audit of each lender conducted by an independent organization or person (§ 682.305(c));
- Require a guaranty agency to submit a request for payment of reinsurance no later than 45 days after the guaranty agency has paid a claim to the lender on a loan (§ 682.406(a)(9));
- Require a guaranty agency, upon the request of a school, to provide information to the school about a borrower who received an FFEL loan for attendance at the school if the borrower's lender submitted a request for preclaims assistance (§ 682.404(a)(5));
- Require the lender prior to or at the time the loan is disbursed to provide the borrower with a clear and concise statement, in bold print and prominently and clearly displayed, that the borrower is receiving a loan that must be repaid (§ 682.205(a)(1));
- Require the lender to disclose certain information regarding repayment to Stafford and SLS borrowers not less than 60 days nor more than 240 days before the first payment on the borrower's loan becomes due (§ 682.205(c)(1));
- Eliminate the requirement for a lender to disclose the projected total of interest charges to SLS, PLUS, or unsubsidized Stafford loan borrowers if the lender provides the borrower with sample projections of monthly repayment amounts (§ 682.205(d));
- Provide that the lender must charge an SLS or PLUS loan borrower an origination fee of five percent of the principal amount of the loan (§ 682.202(c));
- Change the definition of eligible institution by repealing the definitions

of "institution of higher education" and "vocational school" previously found in section 435(b) of the Act (§ 682.200). For purposes of an in-school deferment, an eligible institution includes an institution of higher education whether or not it participates in any Title IV program or has lost its eligibility to participate in the FFEL programs because of a high default rate;

• Define when a repayment period begins for loans made under each of the FFEL programs (§ 682.200);

• Provide a variable interest rate for new Stafford loan borrowers (§ 682.202(a)(1));

• Establish new maximum variable rates for SLS and PLUS loans (§ 682.202(a)(2) and (a)(3));

• Establish a reduced annual loan limit for Stafford loan borrowers who have not completed the first year of an undergraduate program (§ 682.204(a));

• Require a lender to disburse a PLUS loan by means of a co-payable check or by electronic funds transfer (EFT) to the school (§ 682.207(b));

• Require a lender to disburse loan proceeds, at the borrower's request, directly to a borrower enrolled in a study-aboard program approved for credit at the home institution or, at the borrower's request, to the home institution for the endorsement or EFT authorization by an individual provided power-of-attorney by the borrower (§ 682.207(b)(10)(v));

• Require that if a loan is sold, transferred, or assigned to another holder and there will be a change in the identity of the party to whom the borrower must send subsequent payments or direct communications, both the assignor and assignee must provide separate notices to the borrower regarding the sale or transfer (§§ 682.208(e) and 682.508);

• Provide that an SLS borrower who has not yet entered repayment on a Stafford loan may postpone payment until expiration of the borrower's grace period on the borrower's Stafford loan (§ 682.209(a)(2)(iii));

• Make PLUS borrowers eligible to borrow under the Consolidation Loan program if the PLUS loans were obtained after October 17, 1986 (§ 682.100);

• Extend eligibility for Consolidation loans to delinquent and defaulted borrowers who will re-enter repayment through loan consolidation (§ 682.201(c)(1)(ii)(C)(1));

• Allow a Consolidation loan borrower to add additional loans received prior to the date of the Consolidation loan during the 180-day period following the making of the Consolidation loan (§ 682.209(h)(4));

• Provide that interest will be paid by the Secretary on behalf of a Consolidation loan borrower during authorized deferment periods (§ 682.210(a)(3));

• Allow married couples to consolidate their loans jointly (§ 682.201(c)(2));

• Provide for longer repayment periods for Consolidation loan borrowers and require lenders to offer these borrowers repayment schedules that provide for graduated or income-sensitive repayment (§ 682.209(h));

• Provide that when a lender grants forbearance to a borrower, it must be a total cessation of payments unless the borrower requests an extension of time for making payments or a temporary acceptance of smaller payments than previously were scheduled (§ 682.211(h));

• Increase the amount of a fine from $1,000 to $10,000 for any person who knowingly and willfully makes an unlawful inducement to an eligible lender (§ 682.212(g));

• Require a guaranty agency to have an independent financial and compliance audit annually (§ 682.410(b)(1));

• Require the Secretary to prescribe a common application form and promissory note and other common forms developed in cooperation with FFEL program participants (§ 682.401(d));

• Repeal the prior 1 percent limitation on the amount of discount at which a tax-exempt authority may purchase student loans from lenders;

• Eliminate a lender or school's opportunity to request a hearing on the record as governed by the Administrative Procedure Act in the Secretary's review of a guarantee agency's disqualification action against the lender or school (§§ 682.712 and 682.713).

The regulations established various policy initiatives designed to reduce defaults and increase collections on loans that go into default. They also include the revisions to part 682 made in the following final regulations that recently were published: regulations implementing the targeted teacher deferment, see 55 FR 35002 (August 27, 1990); regulations relating to appeals from the loss of FFEL program eligibility for high default rate schools, see 56 FR 33332 (July 19, 1991); and regulations requiring the lender to notify the borrower of a loan assignment, see 56 FR 48990 (September 26, 1991).

To reduce unnecessary duplication of regulations that apply to all Title IV student assistance programs, these regulations delete a number of definitions and existing rules and replace them with cross-references to the Student Assistance General Provisions regulations (34 CFR part 668) and the Institutional Eligibility Regulations (34 CFR part 600).

These regulations seek to improve the efficiency of Federal student aid programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the President's America 2000 strategy to move the nation toward achieving the National Education Goals. The student aid programs also enable both current and future workers to have the opportunity to acquire both basic and technologically advanced skills needed for today's and tomorrow's workplace. They provide the financial means for an increasing number of Americans to receive an education that will prepare them to think critically, communicate effectively, and solve problems efficiently, as called for in the National Education Goals.

Substantive Revisions to the Notice of Proposed Rulemaking

Subpart B—General Provisions

Section 682.200 Definitions

• The Secretary has incorporated into the regulations a definition of "expected family contribution" for the FFEL programs that is consistent with the existing definition used in the Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs.

• The Secretary has revised the definition of "holder" to include a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

• The Secretary has changed the definition of "lender" contained in proposed § 682.200. The NPRM would have allowed mortgage loans serviced, but not held by the lender, to be included in the calculation of the lender's total consumer credit portfolio. The final regulations provide that only loans held by the lender may be included in this calculation. The final regulations also delete the proposal to use a net income standard to determine a lender's primary consumer credit function since events beyond the lender's control, such as an increase in interest rates or defaults on non-student loans, may result in student loans representing the majority of a lender's profits.

• The Secretary has modified the definition of "Stafford Loan Program" to indicate that an unsubsidized Stafford loan is an insured Stafford loan that does not qualify for interest benefits.

Section 682.201 Eligible Borrowers

• The Secretary has revised the provisions of § 682.201(a)(5) to require borrowers to reaffirm any written-off FFEL programs debt before the borrower can receive additional aid under the FFEL programs.

Section 682.202 Permissible Charges by Lenders to Borrowers

• The Secretary has revised § 682.202(a) of the regulations to include the provisions of section 427A of the Act that require a rebate to be given to a borrower with a Stafford loan with an interest rate of 10 percent in the event that Treasury bill rates decline below a certain level.

• Section 682.202(f)(2)(ii) of the proposed regulations has been dropped to be consistent with changes made in § 682.201(a)(4).

• The Secretary has deleted from § 682.202(g) of the proposed regulations, which identifies the costs that a lender may pass on to the borrower in the collection of a FFEL loan, the cost of local and long-distance telephone calls, skip-tracing costs, credit bureau reporting costs, costs of preparing letters or notices, and collection firm charges.

Section 682.205 Disclosure Requirements

• The Secretary has deleted the requirement in proposed § 682.205(a)(1) that would have required a lender to secure the borrower's signed acknowledgement of the initial disclosure statement before disbursing loan funds. Current regulatory language, without the requirement of a signed statement, has been reinstated.

• Proposed § 682.205(b)(3) has been deleted in light of the deletion of § 682.215 resulting from the Secretary's decision not to prescribe in regulations a uniform Federal rule regarding borrower defenses.

Section 682.207 Due Diligence in Disbursing a Loan

• The Secretary has revised § 682.207(d)(2) of the proposed regulations to allow a lender to make a late disbursement within 60 days after the student ceases to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended unless the guaranty agency prohibits late disbursements. The regulations also have been revised to allow a late disbursement to cover a student's documented educational expenses for costs normally included in a borrower's cost of attendance under section 472 of the Act rather than only outstanding institutional charges as proposed in the NPRM.

Section 682.208 Due Diligence in Servicing a Loan

• The Secretary has deleted the requirement in § 682.208(b) of the proposed regulations that would have required a lender to report the borrower's date of default to at least one national credit bureau as provided in section 430A(a)(2) of the Act. This task has been, and will continue to be, performed by the guaranty agency that pays the default claim.

• The Secretary has deleted the requirement in § 682.208(d) that required lenders offering graduated repayment to restrict to the first five years of repayment the period during which the lender may provide for graduated or income-sensitive payments.

Section 682.210 Deferment

• The Secretary has deleted the proposal contained in proposed § 682.210(a)(4)(ii) that permitted a lender to grant a borrower a deferment based on substantially complete documentation pertaining to the borrower's eligibility for a deferment. The final regulations permit a lender to grant a deferment based only on complete information and documentation that establishes the borrower's deferment eligibility.

• The Secretary has changed proposed § 682.210(h)(1)(iii), which specifies the requirements for an unemployment deferment, to define the circumstances under which a public or private employment agency's location is accessible. The Secretary has determined that such an agency is accessible to an unemployed borrower if the agency is located within a 50-mile radius of the borrower's permanent or temporary address.

• The Secretary has modified proposed § 682.210(m)(1)(iii) to permit a borrower to qualify for a deferment as a full-time paid volunteer for a tax-exempt organization as long as the borrower does not receive compensation that exceeds the Federal minimum wage. The proposed regulations would have required the borrower to earn less than the Federal minimum wage to qualify for this deferment.

Section 682.211 Forbearance

• The Secretary has revised the proposed section to permit lenders to grant forbearances to endorsers as well as to the student or parent borrower. Historically, the Secretary has encouraged lenders to extend forbearance to borrowers to prevent defaults. The Secretary believes that extending the forbearance provisions to an endorser who has agreed to make scheduled payments on behalf of the borrower but who temporarily is unable to do so because of personal circumstances will be equally effective in preventing defaults.

• The Secretary has added § 682.211(g) of the regulations to provide that a lender must grant forbearance of interest and principal to borrowers serving in medical internships or residencies whose eligibility for deferment under § 682.210(n) has expired. This revision implements section 428(C)(3)(A) of the Act as added by Public Law 101–239.

Section 682.215 Defenses to the Borrower's Obligation to Repay a FFEL Loan

• The Secretary proposed in § 682.215 to restrict sharply the instances in which borrowers could raise school-related defenses to repayment of a loan made by a bank or other third party. After considering the comments on this proposal and the Department's experience with litigation regarding this matter, the Secretary has determined that it is not desirable at this time to prescribe by regulation a uniform Federal rule regarding borrower defenses that would preempt State law otherwise applicable to FFEL program loans. In the Department's view, whether a defense to repayment of a FFEL program loan is available under State law depends on whether application of State law would frustrate accomplishment of the Federal objectives of the FFEL programs. This requires a case-by-case assessment of individual State laws.

In litigation, the Department has identified four kinds of State laws whose application would not frustrate the accomplishment of FFEL program policies; those State laws are, therefore, not preempted by Federal law. These are State laws that would make a lender subject to school-related defenses if—

(1) The lender had notice (actual or imputed) of substantial prior unresolved complaints about the school prior to making the loan at issue;

(2) The lender had delegated substantial loan-making functions to the school ("an origination relationship" under FFEL program regulations);

(3) The lender and school are corporate affiliates or are otherwise commonly controlled; or

(4) The lender paid a finder's fee or referral fee to the school with regard to the loan.

The Secretary recognizes that whether particular State laws are preempted ultimately must be decided by the courts and that Congress may enact a uniform Federal rule in the future. The Secretary considers the issuance of preemptive Federal regulations to be unwarranted at this time.

Subpart D—Guaranty Agency Programs

Section 682.401 Basic Program Agreement

• The Secretary has revised the proposed regulations to require a borrower to notify the holder of his or her loan, rather than the school, whenever there is a change in the borrower's employer or employer's address.

• The Secretary has revised the proposed regulations to allow a guaranty agency to consider a lender's prior experience in similar Federal, State, or private student loan programs in determining whether to permit the lender to participate in the guaranty agency's program.

• The Secretary has revised the proposed regulations to codify his policy that any transfer of loan guarantees between guaranty agencies may be done only with this approval unless it is a transfer sought by a borrower to secure a single guarantor for all of the borrower's FFEL program loans. The Secretary takes this position in light of the reinsurance implications for the affected agencies and the potential financial liabilities to the Department if such a transfer occurs.

• The Secretary has revised § 682.401(b)(15) to require that a loan may be assigned only if it is fully disbursed and to clarify to which entities a guaranty agency shall permit a loan to be assigned.

• The Secretary has revised the regulations to require that a guaranty agency must have a written agreement with each eligible lender in its program. As part of the President's initiative to reduce the Federal government's regulatory burden on the private sector, the Secretary and student loan industry representatives are participating in a task force sponsored by the Department of Treasury's Financial Management Service to develop a standardized lender agreement for use in the FFEL programs.

• The Secretary has revised the regulations to delete the requirement that a guaranty agency must submit forms to the Secretary for pre-approval prior to their use. Under the 1992 Amendments, the secretary is required to work with FFEL program participants to develop a common application form and promissory note and other common forms. Guarantee agencies will be required to use these forms when they are developed.

• The Secretary has revised the regulations to require that a guaranty agency must develop and implement appropriate procedures that provide for granting a student deferment as specified in § 682.210(a)(6)(iv) and § 682.210(c) (2) and (3). The Secretary expects agencies to require lenders to use these procedures.

Section 682.404 Federal Reinsurance Agreement

• The proposed regulations have been revised to incorporate provisions of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) that require the Secretary to pay guaranty agencies $50 for each account on which the agency performs supplemental preclaims assistance and for which a default claim is not filed by the 150th day after the loan becomes 120 days delinquent.

• The proposed regulations have been revised to require that the Secretary's equitable share of amounts collected on defaulted loans by guaranty agencies be forwarded to the Secretary within 45 days after the payment is received by the guaranty agency, or a collection agency acting on behalf of the guaranty agency, rather than within 30 days as proposed in the NPRM. These amounts normally are offset (subtracted) from amounts owed by the Secretary to guaranty agencies for reinsurance. Because reinsurance claims are processed monthly, the Secretary believes that it would be virtually impossible, using a 30-day deadline, for amounts received at the end of the month to be included on that month's reinsurance-claims submission.

Section 682.406 Conditions of Reinsurance Coverage

• The Secretary has reinstated the requirement in § 682.406(a) of the Department's current regulations that a lender's exercise of due diligence in making, disbursing, and servicing a loan is a condition of reinsurance. The Secretary did not intend to delete this requirement.

Subpart E—Federal Guaranteed Student Loan Programs

Section 682.515 Records, Reports, and Inspection Requirements for Federal Guaranteed Student Loan (GSL) Programs Lenders

• The Secretary has revised § 682.515(c), which governs lender inspections, to correspond to similar inspection requirements for guaranty agencies in § 682.414(c).

Subpart F—Requirements, Standards, and Payments for Participating Schools

Section 682.603 Certification by a Participating School in Connection With a Loan Application

• The Secretary has revised the regulations to require a school, if it becomes aware that a loan applicant is a member of a religious order, group, community, society, agency, or other organization, to determine if the organization meets the conditions of § 682.301(a)(2), which would make the applicant ineligible for Federal interest benefits on a Stafford loan. The school may rely on information provided by the applicant.

• The proposed regulations have been amended to reflect the Department's previous policy guidance establishing the minimum and maximum periods of enrollment for which a school may certify a FFEL program loan application.

• The regulations have been revised to specify that a school may not certify an SLS loan application for an undergraduate student after the school receives a notice from the Secretary, pursuant to § 668.15(i), that its cohort default rate for the most recent fiscal year is equal to or greater than 30 percent. This restriction does not apply to a student who is seeking an SLS loan to complete a program of study for which he or she previously received an SLS loan. A school may not extend the duration of a program of study to evade the consequences of this restriction.

• The regulations have been amended to prohibit a school from engaging in discriminatory practices when refusing to certify a FFEL program loan application.

Section 683.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

• The Secretary has deleted the reference in § 682.604(b)(ii) to a student notifying the school on or before the first day of classes that he or she will be delaying attendance. The Secretary has changed the regulations to allow the school to consider any student who begins attendance after the first day of the period of enrollment for which the loan is intended to have maintained eligibility for the loan from the first day of the period of enrollment. The Secretary has also deleted the 30-day time limit for the student to commence delayed attendance, but has modified § 682.604(d)(3) to provide that a school must return loan proceeds to the lender

no later than 30 days after the first day of the period of enrollment if the students does not register for the period of enrollment or does not begin attendance on a delayed basis prior to that date.

• The Secretary has revised § 682.604(d)(1)(ii)(B) of the proposed regulations to permit but not require a school to hold additional loan proceeds on behalf of a student to help the student manage his or her loan funds, if the student requests that help in writing.

• The Secretary has revised proposed § 682.604(d) (3) and (4) to provide that the school must return the loan proceeds to the lender no later than 30 days after the first day of the period of enrollment if the student fails to register or does not begin attendance. The NPRM would have provided the school with 60 days to return the loan proceeds.

• The proposed regulations have been revised to incorporate new section 428G(b)(1) of the Act (as added by Pub. L. 101–508) that provides that a school may not present the proceeds of the first installment of a loan made to any student who is a first-year, first-time FFEL borrower for endorsement until 30 days after the first day of the student's program of study.

• The regulations have been revised to provide that a school may not deliver a second or subsequent disbursement to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully has completed the period of enrollment for which the loan was intended.

• The regulations have been revised to allow a school to deliver to the borrower a Stafford or SLS disbursement issued in accordance with § 682.207(e). The school will be allowed to deliver a late disbursement, within 60 days after the earlier of (1) the end of the period of enrollment, or (2) before the end of the period of enrollment for which the loan was made but after the student ceased to be enrolled at the school on least a half-time basis, unless the lender or guaranty agency has informed the school that a late disbursement is not permitted.

• The regulations have been revised to provide that a PLUS loan, Consolidation loan, or a loan to a student attending a foreign school is not subject to the overaward provisions in § 682.604(h).

Section 682.605 Determining the Date of a Student's Withdrawal

• The Secretary has revised § 682.605(b) of the regulations, which establishes rules for determining the date of a student's withdrawal. If the student drops out without notifying the school, the school must determine the student's date of withdrawal no later than (1) 45 days after the expiration date of the academic term for a school with standard academic terms and (2) no later than 25 days after a student's last date of attendance for a school using clock hours or credit hours without standard academic terms.

Section 682.606 Refund Policy

• Section 682.606(c)(1)(i) of the regulations governing *pro rata* refunds has not been revised to include a change discussed in the preamble of the NPRM but inadvertently not included in the proposed regulations. The proposed change provided that the reasonable administrative fee a school could subtract from the *pro rata* refund could not exceed $100. However, this change will not be made because the 1992 Amendments include a definition of *pro rata* refund that permits the school to subtract the lesser of $100 or 5 percent of tuition, fees, room and board, and other charges assessed the student.

Section 682.607 Payment of a Refund to a Lender

• The Secretary has revised § 682.607(c) of the regulations, which specifies the deadlines for schools to make timely payments of refunds to lenders on behalf of borrowers, to conform to changes made in § 682.605(b) for determining the date of a student's withdrawal.

Appendix B—Student Status Confirmation Report

• The Secretary has modified appendix B to define the types of data mandated for use on the report to ensure standardized reporting of data.

Appendix D—Policy for Waiving the Secretary's Right To Recover or Refuse To Pay, Interest Benefits, Special Allowance, and Reinsurance on Stafford, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Dear Guaranty Agency Director Letter 88–G–138]

• The Secretary has modified Appendix D to impose a 3-year limit on a lender's option to cure due diligence violations on loans that have lost reinsurance coverage.

• The Secretary has modified Appendix D so that if a loan subject to § 682.411 has a gap of more than 45 days in collection activities, the due diligence violation may be cured by the receipt of a full payment or a signed repayment obligation from the borrower.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 313 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues and significant technical changes are discussed under the section of the regulations to which they pertain.

Section 682.200 Definitions

Endorser

Comment: Many commenters believed that the inclusion of the definition of "endorser" indicates that an endorser is "co-liable" or jointly liable and suggested that the term endorser be deleted.

Discussion: The definition of "endorser" is not intended to imply that an endorser is jointly liable on the borrower's FFEL. As indicated in the definition, the endorser agrees to repay the loan in the event the borrower fails to do so. In the event the endorser refuses to repay the loan, the endorser is in default at the end of the 180th day of delinquency.

Changes: None.

Comment: A number of commenters stated that the proposed definition of "endorser" makes an endorser a co-maker.

Discussion: The definition of "endorser" in current regulations states that the endorser is secondarily liable for the repayment of the loan. The definition was revised in the NPRM to state more clearly that the endorser is liable only in the event that the borrower does not repay the loan. The Secretary does not believe that this definition suggests that the endorser is a co-maker; the endorser is not a co-maker.

Changes: None.

Escrow Agent

Comment: Many commenters suggested that the Secretary change the proposed definition of "escrow agent." Some commenters suggested that the Secretary revise the proposed definition to include PLUS loans. Other commenters indicated that the Secretary's proposed definition was not specific and appeared to exceed the statutory provision providing that only guaranty agencies and eligible lenders may act as an escrow agent to transmit FFEL funds to the borrower or the borrower's school.

Discussion: The Secretary agrees with the commenters that the proposed definition should include PLUS loans among the types of loans that may be transmitted through an escrow agent. The Secretary also agrees that the definition of "escrow agent" should be clarified to indicate that only a guaranty agency or another eligible lender may act as an escrow agent.

Changes: A change has been made. In the final regulations, the Secretary has revised the definition of "escrow agent" to specify that only eligible lenders or guaranty agencies may act as an escrow agent and that these entities may transmit the proceeds of any FFEL program loan to the borrower or the borrower's school.

Estimated Financial Assistance

Comment: Several commenters noted that, to avoid double-counting, estimated financial assistance should not include veterans' educational benefit payments that are included in the need analysis as part of the student contribution. They also noted that, in addition to SLS and PLUS loans, the definition should be expanded to clarify that private and State-sponsored loans and nonsubsidized Stafford loans may be used to substitute for the expected family contribution (EFC).

Discussion: The 1992 Amendments have revised the definition of "estimated financial assistance" to include all veterans' benefits paid because of enrollment in an institution of higher education as well as veterans' education benefits as defined in section 480(c) of the Act. In the loan certification process, institutions currently are required to include as estimated financial assistance those veterans' benefits not included in the need analysis formula. The Secretary has decided that, because the changes made by the 1992 Amendments to exclude veterans benefits from the needs analysis formula do not become effective until July 1, 1993, veterans' benefits should not be included as "estimated financial assistance" until these changes are effective. In light of this change in the law, the Secretary does not believe it is appropriate to change the treatment of veteran's educational benefits as recommended by the commenters. This provision of the 1992 Amendments will be reflected in separate proposed and final regulations developed under the requirements of negotiated rulemaking. The Secretary agrees, however, that the definition should be revised to discuss private and State-sponsored loans and unsubsidized Stafford loans.

Changes: The definition has been revised to incorporate the statutory provision in section 428(a)(2)(E) of the Act that allows amounts received by a student from private and State-sponsored loans to substitute for the EFC and to reflect current policy that allows unsubsidized Stafford loans to be used in the same manner.

Comment: A few commenters disagreed with the proposed change to the definition of "estimated financial assistance" that would require schools to include as estimated financial assistance, Perkins loan or College Work-Study (CWS) awards that were offered to a student and declined, unless an award was declined for an acceptable reason. The commenters believe that the aid administrator should not be required to determine whether the student's declination is for an acceptable reason and that declined awards should not be included in the amount of estimated financial assistance.

Discussion: Current regulations require that the amount of assistance that has been or will be awarded to the student must be considered in determining estimated financial assistance. This amount includes all awards offered, even if declined by the student, regardless of the reason. In proposing the definition included in the NPRM, the Secretary acknowledged that there are certain limited circumstances in which a student should be allowed to decline a Perkins loan or CWS award and not have the amount included in the amount of estimated financial assistance used to determine the student's FFEL eligibility. The Secretary believes that these circumstances include, but are not limited to the following: A student declines a CWS award because he or she (1) is unable to work because of family responsibilities such as caring for an elderly parent or dependent child; (2) is carrying a heavy academic workload (perhaps as part of an accelerated program) or is at academic risk and therefore requires special tutoring or other remedial work; or (3) is already employed at a higher paying or an academically or a career-related job. In the case of a Perkins loan, the student may decline a small Perkins loan award to increase the student's eligibility for a Stafford loan and allow the student to avoid simultaneous repayment to multiple sources following completion of his or her program of study. The Secretary believes that excluding all awards declined by the student, as suggested by the commenters, would frustrate the goal of ensuring that students apply for all forms of assistance. Accordingly, the Secretary is adopting the NPRM proposal in the final regulations.

Change: None.

Full-Time Student

Comment: Several commenters suggested that the Secretary revise the proposed definition of "full-time student" to include a student enrolled at more than one school under a consortium agreement or under similar contractual arrangements.

Discussion: The Secretary wishes to clarify that a student who is enrolled in more than one school under a consortium agreement or similar contractual arrangement may be considered a full-time student based on the student's combined enrollment. The determination that the student is full-time must be made by the school from which the student is seeking a degree or certificate and must be made according to standards applicable to all students enrolled in the student's program of study. The Secretary does not believe, however, that a change in the definition of "full-time student" is necessary.

Change: None.

Grace Period

Comment: Several commenters suggested that the definition of "grace period" should be changed to define that term as the period that begins on the day after a Stafford loan borrower ceases to be enrolled on at least a half-time basis and end on the day before the repayment period begins. The commenters also suggested that using the term "participating school" in the definition rather than the term "eligible institution" would mean that a borrower who transfers to an otherwise eligible institution that has elected not to participate in the FFEL programs will use up his or her grace period even though pursuing a postsecondary education.

Discussion: The Secretary agrees that the commenters' suggested change to the definition more appropriately describes the length of the grace period. The Secretary also agrees with the commenters that requiring a student to be enrolled at a participating school rather than at an otherwise eligible institution could unnecessarily penalize the student by prematurely starting the grace period while he or she is still pursuing a postsecondary education.

Changes: The Secretary has revised the definition of "grace period" in the regulations to be the period that begins on the day after a Stafford loan borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Half-Time Student

Comment: Several commenters recommended that the Secretary revise the definition of "half-time student" to permit a student enrolled in an eligible institution but not at a school participating in the FFEL programs to qualify for a student deferment. The commenters argued that requiring enrollment in a participating school penalizes a student who enrolls in an otherwise eligible institution that elects not to participate in the FFEL programs. They pointed out that such a student would be required to use his or her grace period and begin repayment on a FFEL program loan while still pursuing a postsecondary education.

Discussion: The Secretary understands the commenters' concerns. However, the Secretary notes that at least half-time enrollment is only one criterion for a "new" borrower, as defined in § 682.210(b)(7), to qualify for a student deferment. The other criterion is that the borrower has received a Stafford or SLS loan for the period of enrollment for which the deferment is sought. Therefore, a borrower enrolled on less than a full-time basis may not qualify for a student deferment unless the school is participating in the FFEL programs.

Changes: None.

Comment: Several commenters suggested that the definition specify that a student attending more than one school during an academic term under a consortium agreement or similar contractual arrangement may be considered to be a half-time student based on the student's combined enrollment.

Discussion: The Secretary wishes to clarify that a student may be considered to be enrolled half-time based on the student's combined enrollment at more than one institution under a consortium agreement or similar contractual arrangement. However, the Secretary does not believe that a change in the definition of "half-time student" is necessary.

Changes: None.

Holder

Comment: Many commenters suggested that the Secretary should revise the definition of "holder" to specify which entities may be holders of FFEL loans.

Discussion: The Secretary agrees with the commenters that the definition of "holder" should identify the entities authorized to hold FFEL loans.

Changes: A change has been made. The regulations have been changed to state that a holder is an eligible lender in possession of an FFEL loan note that is payable to, or has been assigned to, the lender, including a Federal or State agency or an organization or corporation acting on behalf of the agency and acting as a conservator, liquidator, or receiver of an eligible lender.

Lender

Comment: One commenter stated that the Act prohibits a lender from mailing unsolicited applications only to students and proposed that the prohibition against mailing unsolicited applications to a student's parents should be deleted. The commenter believes that the restriction should not apply to mailings to parents because it is not provided for in the statute and parents require less protection than students.

Discussion: The Secretary believes that an application that is sent to a student's parents is actually sent to the parents on behalf of the student and, therefore, the same protective measures provided for the student are also necessary for the parents. A lack of any restriction on unsolicited mailings to parents would create a loophole in the explicit statutory restriction on unsolicited mailings to students.

Changes: None.

Comment: Many commenters opposed the provision within the definition of "eligible lender" that would allow a lender to include home mortgages that it serviced, but did not hold, in the calculation of the lender's consumer-credit loan portfolio. The commenters indicated that a loan that is serviced, but not held by a bank, is not considered an asset of the bank for other purposes and, therefore, should not be considered an asset for FFEL program purposes.

Discussion: The Secretary has decided that mortgage loans that a lender services, but does not hold, should not be included in the calculation of a lender's primary consumer-credit function because they do not give a true indication of the receivables due the lender.

Changes: A change has been made. The definition of "eligible lender" has been revised to prohibit the inclusion of home mortgages that only are serviced by the lender in the lender's consumer-credit portfolio in determining whether FFEL loans exceed 50 percent of that portfolio.

Comment: Many commenters objected to the proposal in the definition of "eligible lender" that would examine a lender's net income to determine if FFEL program loans constituted the primary consumer-credit function of the lender. The commenters pointed out that using a net-income standard to determine if a lender's primary function is student loans could result in a lender inadvertently violating the standard due to events beyond the lender's control. These events might include a precipitous rise in interest rates or defaults in non-student loan areas that result in student loans representing the majority of the lender's profits.

Discussion: The Secretary agrees that using a net-income standard could result in the kind of inadvertent technical violations the commenters cite.

Changes: A change has been made. The use of the net-income standard to determine the lender's primary consumer-credit function has been deleted from the definition.

National Credit Bureau

Comment: Many commenters indicated that a credit bureau that operates in more than one State but only in a single region is not considered to be a national credit bureau under present reporting standards.

Discussion: The Secretary believes that the national credit bureau reporting requirements will be frustrated if reporting is restricted to a single region of the country. The Secretary agrees with the commenters that to satisfy the statute's intent, the definition must specify that a credit bureau operating in only one region is not a national credit bureau for FFEL program purposes.

Changes: A change has been made. The Secretary has changed the definition of "national credit bureau" in the final regulations to define a national credit bureau as one that operates in more than one region.

Origination Fee

Comment: A number of commenters suggested that the definition of "origination fee" should be modified to reflect the fact that lenders must pay this fee to the Secretary even if the fee is not charged to borrowers.

Discussion: Section 438 of the Act requires that the origination fee be paid by the lender regardless of whether the fee is assessed against the borrower.

Changes: A change has been made. The definition has been modified to reflect the requirement that lenders must pay the origination fee to the Secretary and may assess the fee against the borrower.

Parent

Comment: Many commenters recommended that the proposed definition be expanded to include a stepparent. These commenters believe that it is unfair to expect a stepparent to

contribute financially to a student's education and yet prohibit the stepparent from borrowing a PLUS loan on behalf of the student.

Discussion: "Parent" is defined in 34 CFR 668.2 as a student's natural or adoptive mother or father and, under limited circumstances, the student's legal guardian; this includes the legal definition of a stepparent. The Secretary believes the definition of "parent" for the PLUS program should be consistent with this definition.

Changes: A change has been made. The term "parent" is defined in 34 CFR 668.2 for title IV program purposes. Therefore, the definition has been deleted in the final FFEL program regulations.

Period of Enrollment

Comment: Several commenters recommended that this term be defined to codify current policy. The commenters argued that it is necessary to define this term in regulations because guaranty agencies do not define the term consistently. The commenters indicated that schools need guidance to correctly certify FFEL program loan applications.

Discussion: The Secretary agrees with the commenters.

Changes: The Secretary has revised the final regulations to define the term "period of enrollment" as the period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with a *bona fide* academic term established by the school for which institutional charges are normally assessed.

Post-Deferment Grace Period

Comment: One commenter recommended that the proposed definition be expanded to specify that the borrower is eligible for only one post-deferment grace period regardless of the number of times the borrower qualifies for an unemployment deferment.

Discussion: The Secretary believes this change is unnecessary.

Changes: No change has been made to the definition. However, the Secretary has revised § 682.210(a)(2)(ii) to include the restriction.

Repayment Period

Comment: One commenter suggested that the term "repayment period" be defined clearly as the term is used frequently throughout the regulations.

Discussion: The Secretary agrees with the commenter that it would be helpful to include a definition of this term that is consistent with § 682.209(a). Moreover, the 1992 amendments have defined when the repayment period begins in each of the FFEL programs.

Changes: The final regulations have been revised to reflect the change made to the Act by the 1992 Amendments. The repayment period for a Stafford loan is now defined as the period beginning the day following the expiration date of the grace period and ending no later than 10 years from that date. For an SLS loan, the repayment period is defined as the period that begins on the date of the last disbursement of the loan and ends no later than 10 years from that date. For a PLUS loan, the repayment period begins on the date the loan is disbursed and ends no later than 10 years from the beginning date of the repayment period. For a Consolidation loan, the repayment begins on the date the loan is disbursed and ends no later than 12, 15, 20, 25, or 30 years from the beginning date of the repayment period, depending upon the sum of the amount of the Consolidation loan and the unpaid balance on other student loans. Corresponding changes have been made in § 682.209(a). Any period of deferment or forbearance is not included in the statutory maximum repayment period.

School

Comment: One commenter suggested deleting the phrase "public or private nonprofit" from the definition. The commenter pointed out that this phrase was unnecessary because the definition of institution of higher education contained in 34 CFR part 600 contained this element.

Discussion: The Secretary agrees with the commenter that it is unnecessary to include this phrase.

Change: The phrase "public or private nonprofit" has been deleted from the definition.

Comment: One commenter objected to including a hospital or health care facility in the definition of "school." The commenter believes that attendance in a program of study at such a facility is approved only for deferment purposes.

Discussion: The 1992 Amendments repealed the definitions of "institution of higher education" and "vocation school" in sections 435 (b) and (c) of the Act. The definition of "institution of higher education" is now in section 481 of the Act and does not include hospital and health care facilities. Therefore, the Secretary now agrees with the commenter that the reference to hospitals and health care facilities should be deleted.

Changes: The reference to a hospital or health care facility has been deleted from the definition of "school."

Comment: Many commenters suggested that the Secretary revise the proposed definition of "promote the availability" as it relates to the definition of "school" as a way to prevent commissioned salespersons from providing application forms or other FFEL loan information to enrolled students as well as to prospective students.

Discussion: The Secretary agrees that enrolled students should receive the same protection from commissioned salespersons promoting the availability of FFEL loans that prospective students receive.

Changes: A change has been made. The Secretary has revised the final regulations to prevent a commissioned salesperson from promoting the availability of FFEL loans to enrolled students.

Comment: A few commenters objected to the proposed expansion of the prohibition on activities of commissioned salespersons. The commenters argued that the proposed language would prevent commissioned salespersons from providing a school catalog to a prospective student because the catalog contains information on student financial aid, including the FFEL programs.

Discussion: The Secretary does not intend to prevent commissioned salespersons, as part of their recruitment activities, from distributing school catalogs that may contain general information regarding student financial aid. The Secretary believes, however, that the proposed language is needed to restrict commissioned salespersons from activities such as providing individuals with financial aid applications, assisting them with the completion of the applications, and assisting them with other aspects of the aid application process.

Change: None.

Temporarily Totally Disabled

Comment: Many commenters suggested that the 90-day time period for which a borrower must be unable to work, earn money, or attend school resulting from an injury or illness was unreasonably long. The commenters suggested that a 30-day time period was more equitable.

Discussion: The Secretary agrees that the proposed minimum 90-day period that a borrower must be totally disabled to satisfy the definition of "temporarily totally disabled" may be too long. The Secretary proposed this standard to be consistent with the 90-day period, required by section 435(g)(2) of the Act, to qualify for a deferment based on the disability of a dependent. The Secretary

agrees that the impact of a borrower's totally disabling condition on his or her ability to repay a FFEL program loan might be much more immediate than the financial impact of a borrower's dependent's disability. However, the Secretary believes that 30 days is too short a period of time, because the borrower would not have yet missed a payment by the close of a 30-day period.

Changes: A change has been made. The Secretary has reduced from 90 days to 60 days the minimum time period that a borrower must be temporarily totally disabled to qualify for the temporarily totally disabled deferment.

Comment: A number of commenters suggested that the phrase "but not for a period of more than three years" be added at the end of the definition of "temporarily totally disabled". The commenters said this should be done to provide a limit to the temporarily totally disabled deferment that was consistent with the statutory deferment provisions.

Discussion: The Secretary does not agree that the three-year maximum should be included with the definition. That limitation is codified in 34 CFR 682.210(b)(1)(iv). In addition, because the criteria for a borrower to be considered temporarily totally disabled differs from the criteria necessary for the borrower to receive a deferment based on the condition of the borrower's spouse or dependent, to include the three-year maximum in the definition could cause unnecessary confusion. For example, the period for which a borrower may receive a deferment based on his or her own total temporary disability, is limited to a reasonable period to recover from an injury or illness up to 3 years. However, a total temporary disability deferment based on a spouse's or dependent's condition is contingent only upon whether the condition is such that the spouse or dependent "during a period of injury or illness of not less than 3 months, requires continuous nursing or similar services." See section 435(g)(2) of the Act.

Changes: None.

Totally and Permanently Disabled

Comment: Many commenters objected to the Secretary further restricting the conditions under which a borrower may receive a loan repayment cancellation by incorporating the phrase "or attend school" in the definition of "totally and permanently disabled."

Discussion: The Secretary does not believe that the phrase "or attend school" further restricts the conditions to receive a loan repayment cancellation for a borrower who is totally and permanently disabled. The Secretary notes that section 435(g) of the Act defines "temporarily and totally disabled" as an individual who is unable to work or attend school. The Secretary does not believe it was the intent of Congress to allow loan cancellations to be based on less restrictive requirements than those required by statute to receive such a deferment.

Changes: None.

Undergraduate Student

Comment: A few commenters recommended that the Secretary redefine the term "undergraduate student." The commenters recommended deleting the phrase "designed to lead to a first degree" because they believe it might be misinterpreted. They pointed out that a baccalaureate degree could be a second degree for a student who previously received an associate's degree and that a student seeking a second baccalaureate degree is still considered to be an undergraduate student. Another commenter objected to considering a student in "any other length program" as an undergraduate student only for the first four academic years. The commenter was concerned that students enrolled in short-term vocational programs would be considered graduate students if they were enrolled for more than four of the school's academic years. The commenter also pointed out that a student who took longer than four years to complete a baccalaureate degree would be considered a graduate student after the fourth year.

Discussion: The Secretary agrees with the commenters that the proposed definition may be misinterpreted. The Secretary did not intend that a student enrolled in a succession of short-term vocational programs that extend beyond four of the school's academic years be considered a graduate student. The Secretary also did not intend that a program of study at or below the baccalaureate level that is designed to lead to a degree or certificate at or below the baccalaureate level could be considered a graduate program. The Secretary also agrees that the language "leads to a first degree" also lends itself to differing interpretations. The Secretary intends that a student enrolled in a second baccalaureate degree program or in a first baccalaureate degree program following completion of a certificate, diploma, or associate's degree program be considered an undergraduate student.

Changes: The definition of "undergraduate student" has been revised to include a student who is enrolled at a school in a program of study at or below the baccalaureate level that is designed to lead to a degree or certificate at or below the baccalaureate level and that normally is completed in four academic years or less.

Section 682.201 Eligible Borrowers

Section 682.201(a)

Comment: Many commenters believed that since proposed § 682.201(a) did not expressly state that a borrower must provide his or her social security number as a condition for Stafford or SLS loan eligibility, a social security number no longer was required. The commenters indicated that without a social security number, their skip-tracing, credit-bureau reporting, and other collection activities would be impaired significantly.

Discussion: Although proposed § 682.201(a) does not expressly require a borrower to provide his or her social security number as an eligibility requirement for a Stafford or an SLS loan, it does require that the borrower meet the eligibility requirements contained in 34 CFR part 668. The provisions of 34 CFR 668.32(a)(1) require the borrower to report his or her social security number to the lender on the statement of educational purpose. The Secretary does not believe that it is necessary to repeat this requirement in the FFEL program regulations as it is required in the regulations governing all the student financial assistance programs authorized under title IV of the Act.

Changes: None.

Section 682.201(a)(2)

Comment: Many commenters objected to including incarcerated students in § 682.201(a) as eligible borrowers. The commenters argued that due to the difficulty involved in working with correctional institutions to acquire an "unconditional release date," all of those students should be ineligible until they no longer are incarcerated. Several commenters also noted that incarcerated borrowers are likely to encounter difficulty locating employment, thus making it unwise, and not in the best interest of the FFEL programs, to make loans to those students.

Discussion: The 1992 Amendments now prohibit incarcerated students from receiving title IV student loans.

Changes: The provision providing for the eligibility of incarcerated students has been deleted.

Section 682.201(a)(3)

Comment: Several commenters suggested that the Secretary amend the requirement that a borrower have his or her need for a Stafford loan determined,

and if determined to have need file an application for a Stafford loan, before being determined eligible for an SLS loan. The commenters recommended that the Secretary codify policy guidance provided in Dear Colleague Letter GEN-88-34 that exempted from this requirement borrowers who have need of less than $200.

Discussion: The Secretary agrees with the commenters that an applicant for an SLS loan should not be required to file an application for a Stafford loan if the borrower has need of less than $200. The Secretary believes this exemption is consistent with section 428(j) of the Act, which provides that a lender of last resort is not required to make a Stafford loan to a borrower who has need of less than $200.

Changes: A change has been made in what now appears as § 682.201(a)(2) of the regulations. The Secretary has revised the definition of "eligible borrower" to provide that a borrower who has need of less than $200 is not required to file an application for a Stafford loan before applying for an SLS loan.

Section 682.201(a)(4)

Comment: Many commenters suggested that the Secretary define or itemize the exceptional circumstances under which a dependent undergraduate student's parents are likely to be precluded from borrowing under the PLUS program as a way to determine whether the student is eligible for an SLS loan.

Discussion: The Secretary believes that a restrictive list of the criteria for determining a dependent undergraduate student's eligibility for an SLS loan should not be included in the regulations because exceptional circumstances might arise that are not covered by the regulations. The Secretary believes that the most equitable way to administer this provision is by providing examples of exceptional circumstances in the regulations while giving the financial aid administrator the discretion to determine, on a case-by-case basis, if other equally acceptable exceptional circumstances exist. Examples of exceptional circumstances include, but are not limited to (1) situations in which the parent is denied a PLUS loan because the parent receives public assistance; (2) the parent is totally and permanently disabled and receives only disability benefits as income; (3) the parent is incarcerated; or (4) the parent is unable to borrow because his or her whereabouts are unknown. Under no circumstances may a financial aid administrator certify a dependent undergraduate student for an SLS loan if the student's parents refuse to borrow a PLUS loan and no exceptional circumstances exist.

Changes: A change has been made in what now appears in § 682.201(a)(3) of the regulations. The Secretary has revised the regulations to incorporate examples of exceptional circumstances that may be used to determine a dependent undergraduate student's eligibility for an SLS loan.

Section 682.201(a)(5)

Comment: Several commenters objected to the proposal to require, as a condition to receive additional FFEL program loans, that a borrower reaffirm a FFEL debt that previously was canceled due to the borrower's total and permanent disability or was discharged in bankruptcy. These commenters suggested that a person who had become disabled may need additional training to be able to secure gainful employment. They also believe the policy was inconsistent with the "fresh start" principle of consumer bankruptcy and the reaffirmation procedures in section 524 of the Bankruptcy Code. The commenters suggested that a borrower who had his or her loan discharged in bankruptcy on grounds of hardship may need to return to school to acquire the skills necessary to secure gainful employment and that forcing the individual to reaffirm prior debts would be a disincentive to returning to school.

Discussion: The Secretary believes that the requirement that a borrower reaffirm a FFEL debt previously canceled is consistent with the principles underlying 34 CFR 668.7(a)(7) regarding the eligibility of defaulted borrowers—e.g., that a borrower who has not satisfied a previous FFEL debt, for whatever reason, should not receive new loans. Furthermore, the Secretary believes that a borrower who has benefitted from having all or part of a loan unilaterally written-off by the Secretary or a guaranty agency should be required to reaffirm the written-off debt before receiving additional Title IV loans.

Changes: A change has been made in what now appears in § 682.201(a)(4) of the regulations. The regulations have been revised to include a provision to require a borrower to reaffirm any FFEL program debt previously written off before receiving additional FFELs.

Section 682.201(c)

Comment: One commenter suggested that the Secretary revise the criteria under which a loan may be consolidated in a Consolidation loan. The commenter suggested that a borrower be allowed to consolidate a loan that is more than 90-days delinquent at the time the Consolidation loan is made rather than requiring that a loan not be more than 90-days delinquent at the time of application for the Consolidation loan. Another commenter recommended that the Secretary permit a borrower who is more than 90-days delinquent on a loan to borrow under the Consolidation loan program to prevent default. The commenter suggested offering this option to borrowers as part of the supplemental preclaims assistance (SPA) effort.

Discussion: The Secretary's proposed regulations governing Consolidation loan eligibility in § 682.201(c) were consistent with former section 428C(a)(3)(A)(ii) of the Act, which stipulated that, to be eligible for loan consolidation, a borrower may not be more than 90-days delinquent on a loan to be consolidated at the time the borrower submits an application for a Consolidation loan. However, the 1992 Amendments changed section 428C(a)(3)(A)(ii) of the Act to delete the "90-day delinquent" provision and provide for the eligibility of a delinquent or defaulted borrower who will re-enter repayment through loan consolidation.

Changes: The regulations have been revised to reflect the change in the definition of eligible borrower for Consolidation loans made by the 1992 Amendments.

Section 682.202—Permissible Charges by Lenders to Borrowers

Comment: One commenter suggested that the Secretary eliminate the words "by lenders" in the title because interest may be charged, interest may be capitalized, and late charges or collection charges or both may be assessed by a guaranty agency after it pays a default claim on a loan. The commenter stated that it would be useful to make the agency's authority to assess these charges explicit in the title of this section.

Discussion: The Secretary does not agree that the title of this section of the regulations should be revised so as to clarify a guaranty agency's authority to assess a borrower these charges because not all the costs listed in the regulations (i.e., origination fees and refinancing fees) are charged by guaranty agencies. The Secretary also believes that an agency's authority to assess collection charges and capitalize interest are adequately addressed elsewhere in the regulations.

Changes: None.

Section 682.202(a)

Comment: Many commenters suggested that the interest rate on a Stafford loan with an 8 percent interest rate should increase to 10 percent under proposed § 682.202(a)(1)(i)(D) if a default claim is paid on the loan after the repayment period begins but before the 4-year period elapses that dictates when the interest rate changes to 10 percent.

Discussion: Section 427A(d) of the Act only authorizes a change in the interest rate at the end of four years after the beginning of repayment, even if a default claim has been paid on the loan.

Changes: None.

Comment: Many commenters suggested that § 682.202(a)(5) of the NPRM should be modified to reflect that lenders may charge an actual interest rate on a Consolidation loan that is lower than the interest rate calculated under section 428C of the Act.

Discussion: The NPRM appears to prohibit a lender from charging a lesser interest rate than the interest rate calculated under section 428C of the Act. However, section 427A(f) of the Act clearly states that a lender may charge a lesser rate than the one specified in section 428C of the Act.

Changes: A change has been made. The regulations have been revised to clarify that a lender may charge a lower interest rate on a Consolidated loan than the rate specified in section 428C of the Act.

Comment: Many commenters suggested that a provision should be added to the regulations for variable interest rate loans that are based on the 91-day Treasury bill rate plus 3.25 percent that changes each January 1.

Discussion: A number of variable interest rate PLUS and SLS loans made after the enactment of the 1986 Amendments but before the enactment of the Technical Amendments remain subject to a calendar-year adjustment of the variable interest rate based on the 91-day Treasury bill method that existed in section 427A(c)(4) of the Act during this period. Such a loan remains subject to this variable-rate adjustment, as stated in the borrower's promissory note, for the life of the loan unless the borrower chooses to refinance under the current interest rate provisions. If a borrower whose interest rate changes each January 1 refinances his or her loan, that loan may not revert back to the interest rate provisions applied to the borrower's original loan.

Changes: A change has been made. The final regulations have been revised to reflect the interest rate provisions for those borrowers whose interest rates change each January 1.

Comment: A number of commenters noted that the 12 percent ceiling on variable interest rate PLUS and SLS loans was not mentioned in the proposed regulations.

Discussion: The Secretary agrees with the commenters that the provisions of section 427A(c)(4) of the Act related to the variable interest rate ceiling for PLUS and SLS loans should be included in the regulations.

Changes: A change has been made. The final regulations will clarify that a 12 percent ceiling applies to variable-rate PLUS and SLS loans. The Secretary has also amended the regulations to reflect the new variable interest rate ceilings of 10 percent for PLUS loans disbursed on or after October 1, 1992 and 11 percent for SLS loans disbursed on or after October 1, 1992, resulting from the 1992 amendments.

Section 682.202(b)

Comment: Many commenters suggested that the regulations should be modified to provide for the capitalization of interest from the beginning of the repayment period until the first payment due date when the lender receives late notification that the borrower has dropped below half-time enrollment. The commenters also suggested that the regulations permit capitalization of interest accruing on SLS loans during periods of student deferment and on nonsubsidized Stafford loans during periods of student deferment and during the grace period if the borrower agreed to make payments but (1) failed to do so, and (2) failed to respond to a notice of delinquency stating that the lender plans to capitalize the interest accruing during the remainder of the deferment period.

Discussion: Previous guidance from the Department in Dear Guaranty Agency Director Letter 88–G–138 and Dear Colleague Letter 90–G–175 allowed lenders to capitalize interest in these instances. Many program participants have adopted these practices. While the Secretary remains concerned about the effects of capitalization on borrowers, the Secretary agrees that a borrower's failure to honor his or her obligation to make a promised payment or to respond to a delinquency notice sent by the lender warrants this approach.

Changes: A change has been made. Section 682.202(b) has been modified to reflect the Department's decision to permit lenders to capitalize interest under these circumstances.

Section 682.202(c)(4)

Comment: Many commenters suggested that the phrase "the portion of loan proceeds which are" be deleted and replaced with the phrase "any full disbursement". The commenters argued that the proposal does not agree with earlier guidance provided by the Department in a Dear Colleague letter. They believe the suggested change will ensure that only full disbursements returned to the lender or not delivered to the borrower will trigger a refund of origination fees.

Discussion: The Secretary agrees with the commenters. Guidance provided by the Department in Dear Colleague Letter Gen–90–93, Q&A 78, stated that if an institution negotiated the original loan check because the student was eligible for a portion of the original disbursement, the lender was not required to refund the amount of the origination fee attributable to the portion of the loan returned to the lender for which the student is no longer eligible. If the student is ineligible for the entire amount disbursed or the institution otherwise chooses to return the original loan check and request a revised check, the lender must refund the amount of the insurance premium and origination fee that is attributable to the amount of the loan for which the student is no longer eligible to the student's account.

Changes: A change has been made in the final regulations in what is now § 682.202(c)(5) to reflect the guidance provided in Dear Colleague Letter Gen–90–93, Q&A 78.

Section 682.202(e)

Comment: A few commenters suggested changing "a lender" to "any lender" to prevent misinterpretation of the one-time refinancing fee. The commenters believe this clarification is necessary because there may be more than one lender involved in refinancing.

Discussion: The Secretary does not believe that the regulations preclude a lender, or more than one lender, from charging a borrower a $100 fee for separate refinancing transactions. For example, if a borrower refinances different loans through the same lender over a period of years, the lender may charge the borrower a fee for each refinancing transaction. Similarly, if a borrower refinances different loans through different lenders, each lender refinancing a loan for the borrower may assess the borrower the $100 fee. The regulations permit only the lender refinancing the loan to charge the borrower the fee.

Changes: None.

Section 682.202(g)

Comment: Several commenters objected to proposed § 682.202(g),

which would permit lenders to require borrowers to pay the costs normally associated with routine collection activities.

Discussion: The Secretary agrees with the commenters. The Secretary expects lenders to cover the routine collection costs associated with preparing letters and notices or with making local and long-distance telephone contact with the borrower through earnings made on the loans. The Secretary will allow only extraordinary costs, such as telegrams, attorney's fees, and court costs to be passed along to the borrower.

Changes: A change has been made. The final regulations have been revised to contain the same language as current regulations except for the addition of a reference to long-distance telephone calls, which the Secretary believes are routine collection costs.

Section 682.204 Maximum Loan Amounts

Comment: Several commenters asked the Secretary to clarify that annual loan amounts for a Stafford loan borrower are based on the borrower's academic standing in the program in which he or she currently is enrolled.

Discussion: The Secretary agrees with the commenters. If a borrower has received a baccalaureate degree and then subsequently enrolls in a second baccalaureate program, that borrower is eligible only for $2,625 annually until he or she is considered a third-year student in the second program.

Changes: The regulations have been revised to reflect that the Stafford loan annual amounts are based on the borrower's academic standing in the program in which he or she is currently enrolled.

Comment: A few commenters recommended that "a borrower" should be revised to "each borrower" in § 682.204(c) to clarify that the PLUS annual loan limit does not restrict a parent from borrowing for more than one dependent.

Discussion: The Secretary agrees with the commenters' recommendation. The Secretary also notes that the 1992 Amendments repealed the annual and aggregate limits on the amount a parent may borrow in the PLUS programs, for loans on which the first disbursement is made on or after July 1, 1993.

Changes: The regulations have been revised to clarify that a parent may borrow up to $4,000 for each dependent student in the family for any academic year and up to a total of $20,000 for each dependent student.

Comment: A number of commenters recommended deleting the provision to attribute Consolidation loan amounts to the borrower's Stafford, SLS, and PLUS loan maximums in proportion to the amounts of the underlying loans consolidated. They indicated that neither lenders nor guarantors could be expected to track this data. They argued that it is unreasonable to expect borrowers to keep track of the information and report it to subsequent FFEL lenders. Furthermore, they believe no enforcement mechanisms exist for carrying out this provision.

Discussion: The Secretary disagrees. The Secretary believes that lenders are able, through the certified statement provided by other lenders during the consolidation process, to determine the amounts of underlying loans that have been consolidated. Guaranty agencies must require their lenders to submit data that allows the agency to track a borrower's aggregate loan amounts, in accordance with section 428C(a)(3)(B)(ii) of the Act and these regulations. A guaranty agency's ED form 1130 report submissions will be subject to review by the Secretary to ensure compliance with this provision.

Changes: None.

Section 682.205 Disclosure Requirements for Lenders

Comment: Some commenters suggested that this section be modified to prohibit lenders from charging the borrower for the costs incurred in making required disclosures concerning the loan.

Discussion: Lenders are required to make certain disclosures to borrowers before they enter repayment. However, the cost of making these disclosures is considered a normal cost of doing business and may not be charged to the borrower under § 682.202 and is prohibited under § 682.205(d).

Changes: None.

Section 682.205(a)(1)

Comment: Commenters overwhelmingly objected to the requirement that a borrower must provide the lender with a written acknowledgement of his or her receipt and understanding of the disclosure information that the lender is required to provide the borrower before the lender may disburse the loan. The commenters believe that imposing this additional step after the lender provides the required disclosure information and before the loan disbursement is made will be extremely burdensome for the school, the lender, and the borrower. They argued (1) that the requirement would impose another item for lenders to monitor; (2) that borrowers' signed acknowledgements would not be received in a timely fashion, which would result in the expiration of loan guarantees and requiring borrowers to reapply; and (3) that students' and schools' receipt of loans would be delayed significantly. School commenters noted that the terms and conditions and other information related to the loan are reviewed with new borrowers during the required initial counseling prior to delivery of the loan proceeds and that this provides the borrower with an opportunity to cancel the loan.

Discussion: The Secretary understands that requiring a signed acknowledgement of the initial disclosure prior to loan disbursement could seriously impede the delivery of student loans and frustrate the goal of electronic funds transfer, which the Secretary supports. The Secretary also agrees that confirmation of a borrower's understanding of the terms and conditions of the loan prior to the borrower incurring the debt can be handled successfully during required initial counseling.

Changes: The Secretary has deleted the proposal to require the borrower to provide the lender with a signed acknowledgement of the initial disclosure.

Section 682.205(a)(2)(xvii)

Comment: Some commenters suggested that paragraph (a)(2)(xvii) should specify that the use of a reference table of estimated repayment amounts in disclosing an estimate of a borrower's projected monthly payment is acceptable as stated previously by ED.

Discussion: The Secretary agrees with the commenters that this paragraph should codify existing policy guidance provided in Dear Colleague Letter 86–G–97 that allows a table to be used in disclosing a borrower's estimated cumulative monthly payment.

Changes: A change has been made. The regulations have been revised to adopt this suggestion.

Section 682.205(b)(3)

Comment: A number of commenters suggested that the language of this provision regarding the statement of borrower's rights and responsibilities is misleading and could be construed to imply that borrowers need not repay loans made by school lenders.

Discussion: The Secretary agrees with the commenters.

Changes: The Secretary has deleted that language to prevent any potential misunderstanding regarding the repayment obligation of borrowers.

Section 682.205(d)

Comment: One commenter recommended retaining the language from current § 682.205(c) that requires the lender to provide the information that is required to be disclosed by this section at no cost to the borrower.

Discussion: The Secretary agrees with the commenter that this information should be provided to the borrower without charge.

Changes: Current § 682.205(c) has been restored to the regulations as § 682.205(d).

Section 682.206 Due Diligence in Making a Loan

Section 682.206(a)(1)

Comment: Some commenters suggested that § 682.206(a)(1) assumes that there must be a separate application or promissory note or both for each period of enrollment for which FFEL program loan funds are sought. They believe this approach would preclude the possible use of a single, open-ended promissory note for a borrower's entire undergraduate and graduate loan maximum, the use of the Application for Federal Student AID (AFSA) and other approved aid applications, and the use of electronically submitted application data to guarantee and disburse loans. The commenters objected to any regulatory restrictions that would prevent establishing new processing procedures to reduce the administrative burden on applicants, schools, lenders, and guarantors.

Discussion: The Secretary does not believe that this section precludes the possible use of a single application or promissory note or both or the use of electronically transmitted data. The Secretary actively encourages examination of the use of any approach that may streamline and improve the student aid delivery system. In working with the community in the development of common forms, the Secretary will examine the use of electronically submitted data, as well as other concepts.

Changes: None.

Section 682.206(b)

Comment: One commenter suggested adding a new provision prohibiting a lender, school, or guaranty agency from obtaining a borrower's power of attorney to complete a FFEL loan application on behalf of the borrower. The commenter argued that it is unreasonable to expect a student to understand the rights and obligations of a borrower of a FFEL program loan if the school or another party completes the application or promissory note.

Discussion: The regulations prohibit the use of a power of attorney to endorse a loan check or to approve the transfer of loan proceeds to the borrower's account using electronic funds transfer unless the borrower is enrolled in a study-abroad program approved for credit at the home institution at which the student is enrolled. See § 682.207(b)(2). The Secretary believes that this restriction provides sufficient protection for the borrower. The Secretary also believes that the use of power of attorney to complete an application or promissory note is useful for the student in some circumstances and should not be totally precluded. For example, power of attorney was used extensively for completing applications by borrowers serving in Operation Desert Shield or Operation Desert Storm.

Changes: None.

Section 682.206(c)

Comment: Several commenters recommended that § 682.206(c) of the regulations be revised to specify that in determining a borrower's eligibility for a loan amount, the lender may not approve a loan for more than the borrower requests or shows financial need, for, or the annual loan maximum. The commenters cited many instances of borrower requests for loans less than the annual loan maximum being ignored. They also believe that it should be emphasized that the lender is responsible for monitoring the borrower's approved loan amount based on the borrower's remaining financial need and annual loan maximums. The commenters believe this is particularly critical in processing multiple applications for a borrower during a given academic year and in light of the format of many loan applications.

Discussion: The Secretary agrees that a lender must follow the borrower's instructions regarding the loan amount as requested. The Secretary believes that, although it is the school's primary responsibility as part of the certification process to monitor a borrower eligibility based on annual and aggregate loan maximums, the lender also has a responsibility in making a loan to ensure that a borrower does not receive loan proceeds in excess of the annual and aggregate maximums.

Changes: A new section has been added to the regulations to specify that a lender may not approve a loan amount that is more than the borrower requests or qualifies for based on unmet financial need or annual loan maximums.

Comment: One commenter stated that this section assumes that all schools certify Cost of Attendance and Estimated Financial Assistance on a paper application form that is submitted to the lender. The commenter pointed out that in a number of automated application processes already in place, the data information is transmitted electronically by the school. The commenter recommended that the first sentence of the section be revised to require the lender to review data on the student's cost of attendance and estimated financial assistance provided by the school. Another commenter noted that in many application processing systems the guaranty agency, rather that the lender, receives the data *via* paper application or electronic transmission. The guaranty agency is the party that reviews the data to determine the loan amount based on annual and aggregate loan limits before issuing a guarantee and notifying the lender. The commenters recommended revising this provision of the regulations to allow the lender or guaranty agency to fulfill this function.

Discussion: The Secretary agrees with the commenter that the regulations should reflect the use of electronic data transmission in the application process. The Secretary also understands that in some application-processing systems the guaranty agency reviews the data before issuing a guarantee. The Secretary does not intend, through the regulations, to preclude a guaranty agency from operating in this manner on behalf of lenders. However, the lender is responsible for reviewing the application and determining the loan amount pursuant to § 682.206 of the regulations. In the situation described by the commenters, the guaranty agency acts as the agent of the lender in its receipt and review of application data and its determination of borrower eligibility. Therefore, the Secretary does not believe that the regulations should be changed to refer to guaranty agencies specifically.

Changes: The regulations have been changed to clarify that applicant and loan certification data may be provided electronically.

Section 682.206(e)

Comment: Many commenters opposed the requirement in the proposed regulations that prohibited a guaranty agency from requiring cosigners for a Stafford or SLS loan. The commenters noted that nothing in the Act supported such a prohibition.

Discussion: The Secretary agrees with the commenters.

Changes: The prohibition against a guaranty agency requiring a lender to obtain security or endorsement on a

Stafford or SLS loan has been deleted from the final regulations.

Section 682.207 Due Diligence in Disbursing a Loan

Section 682.207(b)(1)(i)(B)

Comment: A commenter suggested that regulations governing loan disbursement should require the lender to comply with the disbursement schedule provided by the school or with the recommended disbursement dates provided by the school for a particular borrower on the loan application.

Discussion: Under section 428G(c)(1) of the Act, the lender must follow the disbursement schedule provided by the school under section 428(a)(1)(A)(i)(III).

Changes: The regulations have been revised to provide that a lender must disburse a Stafford or SLS loan in accordance with a disbursement schedule provided by the school.

Section 682.207(b)(1)(ii)(A)

Comment: One commenter suggested that all FFEL checks should be co-payable, including PLUS. The commenter believes that the school should have the opportunity to verify the eligibility of the student on whose behalf a parent is borrowing a PLUS loan before the parent receives the loan proceeds.

Discussion: As a result of the 1992 Amendments, section 428B(c) of the Act now requires that PLUS checks be made co-payable to the borrower and the school. However, in regard to the other FFEL programs, section 428(b)(1)(N) of the Act prohibits the Secretary from requiring co-payable checks.

Changes: The regulations have been revised to require PLUS checks to be made co-payable to the borrower and the school.

Comment: Many commenters supported the Secretary's deletion of the phrase "other written approval" from the regulations because they believe it is ambiguous. One commenter supported the deletion of the phrase and also noted that this paragraph allows co-payable checks only if the guarantor requires co-payable checks. The commenter recommended that since many lenders make loans guaranteed by more than one guarantor, it may be more appropriate to allow the co-payable decision to be made by the lender rather than the guaranty agency. Several other commenters asked whether the deletion of "or other written approval" would prevent delivery of the borrower's loan process through the use of direct deposit of a borrower's loan funds.

Discussion: The Secretary notes that the deletion of the phrase "or other written approval" would prevent the delivery of loan proceeds through the use of direct deposit into a borrower's account at a financial institution because the borrower's signature on a direct deposit form does not constitute a personal endorsement. Because the Secretary believes that the use of the direct-deposit delivery mechanism is important for borrowers who are attending classes at another institution under an agreement with the borrowers' home institution, he has decided to revise the regulations to include the phrase "or other written certification." This phrase, which is consistent with the language of section 428(b)(1)(N) of the Act, is intended to permit the use of direct deposit based on the borrower's written certification on a direct deposit form. The Secretary agrees that a lender of a Stafford or SLS loan should be allowed to establish a policy of making Stafford or SLS loan checks co-payable if co-payable checks are not required by the guaranty agency and the guaranty agency has no objection to the lender adopting such a policy.

Changes: The regulations have been revised to include the phrase "or other written certification" to provide for the use of direct deposit of a borrower's funds into his or her account at a financial institution. The regulations also have been revised to allow a lender to establish a policy of making Stafford or SLS checks co-payable if this is not required by the guaranty agency.

Section 681.207(b)(1)(ii)(B)

Comments: Several commenters supported the Department's proposed requirement that the borrower approve the release of loan proceeds by electronic funds transfer to an account that requires written approval by the borrower for the release of those funds from the account. However, the commenters did not agree with the requirement of a separate "written" approval statement from the borrower. The commenters suggested that the term "written" be deleted and that the phrase "negotiated in accordance with § 682.604(c)(3)(ii)" be added at the end of the provision. They believe that the additional language would clarify that the school is required to document the receipt and application of the funds to the borrower's account with the school. They recommended that the requirement that the borrower approve the release of loan proceeds by electronic funds transfer be moved from § 682.207 to § 682.604 to clarify that the responsibility for obtaining the borrower's authorization to release funds and maintaining evidence of the authorization rests with the school.

Discussion: The Secretary believes that the requirement that the borrower give written approval for release of the loan proceeds is consistent with the statutory requirement that funds be disbursed in a manner that requires "the endorsement or other certification by the student." See section 428(b)(1)(N) of the Act. The Secretary has clarified the school's responsibility to secure and retain the borrower's written authorization in § 682.610(b)(9)(iv).

Changes: None.

Comment: A number of commenters objected to the proposed requirement that funds disbursed by electronic funds transfer be disbursed to a restricted account maintained by the school from which funds cannot be released without the borrower's written approval.

Discussion: Section 428(b)(1)(N) of the Act requires that funds are to be disbursed to students by a means that "requires the endorsement or other certification by such student." The Secretary has decided that a single written approval for each type of loan (e.g., Stafford or SLS) is sufficient for all disbursements. This written approval to release loan proceeds from the school's restricted account must be a separate statement and may not be incorporated into the loan application.

Changes: None.

Section 682.207(b)(1)(v)(B)

Comments: A few commenters expressed concern about the proposed requirement governing loan disbursement to a borrower enrolled at a foreign institution as part of a program of study at a school located in the United States. Under these circumstances, the loan check must be disbursed to the school in the United States and the borrower's endorsement on the loan check must be secured before the loan proceeds can be applied to the borrower's account with the school. The commenters understand that, under current regulations, the school has the option of directly depositing the check into the borrower's account at a financial institution. The borrower then pays the school from that account. The commenter recommended that the proposed regulations be revised to allow the school to secure the borrower's approval for the use of direct deposit earlier than 30 days before the date the borrower is scheduled to enroll because most students involved in these programs generally have left the country and are in school by the time loan funds are disbursed.

Discussion: The 1992 Amendments changed section 428(b)(1)(N) of the Act to provide that in the case of a student in a study-abroad program approved for

credit at the home institution at which the student is enrolled, the lender must, at the borrower's request, disburse the loan directly to the borrower. Alternatively, at the borrower's request, the lender shall disburse the loan proceeds to the borrower's home institution if the borrower provides his or her power-of-attorney to an individual not affiliated with the institution to endorse the borrower's check or complete an EFT authorization. The endorsement of the loan checks or completion of an EFT authorization by an individual under a power-of-attorney must be done according to the requirements contained in § 682.604(c)(2) and (3). The Secretary believes that these changes to the disbursement and delivery provisions for students studying abroad under the auspices of the home institution do not prohibit the use of the option of directly depositing the borrower's loan proceeds into the borrower's account at a financial institution as previously authorized. For borrowers who are not first-time borrowers subject to delayed delivery of Stafford and SLS loan proceeds, nothing contained in § 682.604(c)(2) prevents the school from securing a borrower's approval for direct deposit of a loan check into the borrower's account at a financial institution earlier than 30 days before the first day of classes in the period of enrollment, provided the borrower is registered as a student. The actual delivery of the loan proceeds, however, must be made pursuant to § 682.604(d) of the regulations.

Changes: None.

Section 682.207(d)(2)

Comment: Many commenters objected strenuously to the proposal to limit the amount of a late disbursement only to the amount needed to cover a student's outstanding charges at the institution. The commenters argued that this creates an unfair economic burden on the student because the student's demonstrated financial need for the period of enrollment for which the loan is intended is based on institutional and non-institutional charges and is not reduced after the last day of classes. The commenters argued that the proposed regulations are not consistent with the disbursement of late awards in the other Title IV programs and do not recognize that a student may have other outstanding debts that resulted from the student borrowing to finance his or her attendance at the school (e.g., paying tuition with a credit card, using private loans for living expenses, etc.).

Discussion: The Secretary agrees with the commenters that a lender making a late disbursement of FFEL loan proceeds should be allowed to recognize more than outstanding institutional charges if the borrower can document additional educational costs he or she incurred that are included normally in a borrower's cost of attendance under section 472 of the Act. The school would be expected to collect and retain documentation from the student supporting the amount of the late disbursement delivered to the borrower. Excess loan proceeds must be refunded by the school to the lender.

Changes: The regulations have been revised to allow a lender to make a late disbursement based on the borrower's documented educational expenses for the period of enrollment if those expenses include costs that are normally included in a borrower's cost of attendance under section 472 of the Act.

Comment: A number of commenters agree with the Secretary that the late disbursement policy needs to be standardized. However, they believe the language of the NPRM is unnecessarily complex and should be simplified. They recommended that lenders be allowed to disburse funds up to 60 days after the student has ceased to be enrolled on at least a half-time basis without express guaranty agency approval. Other commenters believe that guaranty agencies should be allowed to establish procedures for requesting and approving late disbursements according to the needs of their program participants and systems.

Discussion: The Secretary agrees with the commenters that the late disbursement policy needs to be simplified and that the guaranty agency should have the option of allowing lenders to make late disbursements. The Secretary believes that, if a guaranty agency does not prohibit late disbursements, a lender should be allowed to make a late disbursement within 60 days after the student ceases to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended without prior approval of the agency. The Secretary also believes that if the guaranty agency and lender have informed the school that late disbursements are permitted, a school should be able to deliver the loan proceeds to the borrower without obtaining the guaranty agency's or lender's approval on a case-by-case basis.

Changes: The regulations have been revised to provide that if the guaranty agency does not prohibit late disbursements, the lender may disburse loan proceeds within 60 days after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended. The Secretary has also revised § 682.604(e) to correspond with the changes made to § 682.208(d) by allowing a school to deliver loan proceeds received within 60 days of the earlier of the dates specified in § 682.604(e)(1) unless the guaranty agency or lender have informed the school that late disbursements are prohibited.

Section 682.208 Due Diligence in Servicing a Loan

Comment: One commenter recommended that the Secretary regulate servicers as many loans are serviced by third-party servicers.

Discussion: The 1992 Amendments specifically authorized the Secretary to regulate third-party servicers. The Secretary intends to develop these regulations through the negotiated rulemaking process for rules implementing the 1992 Amendments.

Changes: None.

Section 682.208(b)

Comment: Serveral commenters recommended changing the time period required for credit bureau reporting from 90 days to 150 days of a disbursement. They stated that making credit bureau reporting consistent with the 120-day cancellation rule will prevent many instances of unnecessary reporting in which information submitted to meet the 90-day reporting deadline must be corrected because a loan is subsequently canceled by the 120th day.

Discussion: While it is true that a loan is canceled if the amount disbursed is repaid or the check is not cashed within 120 days, the Secretary believes that 150 days is too long and that the 90-day period is late enough in the disbursement process to prevent the unnecessary reporting of most canceled disbursements.

Changes: None.

Comment: Several commenters indicated that reporting a borrower's delinquency before the 90th day of delinquency substantially increases the unnecessary reporting of borrowers who are in the process of remitting payment or securing the documentation to support a deferment or forbearance. They recommended that reporting the extent of the borrower's delinquency should occur at or after the 90th day of delinquency.

Discussion: The Secretary believes that it would be inconsistent with the intent of Congress and the purpose of credit bureau reporting if only

borrowers who are delinquent on their loans by 90 days or more are reported to credit bureaus. The fact that a borrower consistently is late in remitting payments is relevant information to those entities that use credit bureau information. In addition, although the Secretary understands that there might be a delay in the submission of documentation supporting a borrower's eligibility for a forbearance or deferment, he nevertheless believes that the borrower remains responsible for making payments if he or she is unable to submit supporting documentation promptly.

Changes: None.

Section 682.208(c)(1)

Comment: Several commenters suggested that this section be revised to require that a lender respond to any inquiries about a loan from a borrower or endorser within a reasonable time period rather than within the proposed 30 days. They believe that in many cases 30 days is not enough time to research properly a borrower's account, especially if the research involves the originating lender, system transfers, and several subsequent holders. They also believe that in some cases, such as deferment processing, 30 days may be too much time. They recommended that the regulations provide that responses be made within a reasonable time, thus allowing guaranty agencies the flexibility to establish reasonable response times depending on the nature of the inquiry.

Discussion: The Secretary wishes to clarify that the lender's response to a borrower's inquiry by the 30-day deadline may be in the form of a written interim response. The Secretary recognizes that a lender may need more time to research some cases, but believes that it is reasonable to expect some form of response be given to the borrower within this time period.

Changes: None.

Section 682.208(d)

Comment: Many commenters opposed the Secretary's effort in the NPRM to encourage lenders to offer graduated or income-sensitive repayment schedules, citing the increased costs the borrower incurs over time with those schedules. On the other hand, many other commenters applauded the Secretary's efforts, saying that such an initiative shows sensitivity to the fact that a borrower's income and ability to repay is generally less at the beginning of the repayment period than at the end.

Discussion: The Secretary recognizes that a borrower will pay less over the life of a loan with a level repayment schedule than with a graduated repayment schedule. However, the Secretary also believes that it is critical to establish a repayment habit with borrowers. A repayment schedule that the borrower views as unrealistic might impede that effort and might, in fact, precipitate a default. Therefore, the Secretary will continue to strongly encourage the use of graduated repayment schedules for old borrowers. The 1992 Amendments amended section 428(b)(1)(E)(i) of the Act to require lenders to offer a graduated or income-sensitive repayment schedule to new borrowers after July 1, 1993.

Changes: None.

Section 682.208(f)

Comment: Several commenters objected to the proposed requirement that a lender make what they believe is a highly subjective evaluation of whether the borrower "knew" or "should have known" that information used to support his or her eligibility was incorrect. The commenters recommended that the regulations be revised to permit a lender to use "substantial facts" to determine whether a borrower has established eligibility for all or part of the loan.

Discussion: The Secretary notes that the proposed requirement that the lender determine whether the borrower "knew" or "should have known" was intended to clarify that the procedures of § 682.412 should be applied only to: (1) Borrowers who provided false or erroneous information to support their eligibility for insurance coverage and the payment of Federal interest benefits on their behalf, and (2) borrowers who received loan proceeds for which they subsequently were determined to be ineligible because they did not attend school for the period of enrollment for which the loans were intended. The Secretary wishes to distinguish these borrowers from those whose ineligibility resulted from an error made by the school in determining borrower eligibility and certifying the loan application or by the lender in making the loan. In clarifying the application of § 682.412, however, the Secretary did not intend to require the lender to take action unless it received information about a borrower that could be substantiated by the lender directly or by the school.

Changes: The regulations have been revised to provide that a lender shall follow the procedures in § 682.412 if it receives information that can be substantiated that the borrower, or, if applicable, the student on whose behalf a parent borrowed, provided false or erroneous data to support his or her loan eligibility or that the borrower received loan proceeds for which he or she became ineligible due to nonattendance.

Section 682.209 Repayment of a Loan

Comment: A commenter suggested there should be a section in this area that addresses combining Stafford loans to allow one payment by the borrower. The commenter also questioned whether loans can be combined in one payment if the loans enter repayment at different times.

Discussion: Nothing in this section prevents a lender from establishing a single repayment schedule for a borrower with multiple FFEL loans. If the lender establishes such a schedule, it must ensure that payments are applied so that each loan is repaid within the 10-year maximum repayment period.

Changes: The Secretary has added language in § 682.208(d) to clarify that a lender may establish a single repayment schedule for all the FFEL loans that the lender holds for a particular borrower.

Section 682.209(a)(3)

Comment: One commenter stated that there is a great deal of confusion surrounding the establishment of the payment due date following a period of authorized deferment or forbearance and recommended that the Secretary provide clarification in this area.

Discussion: The Secretary has decided that a lender may use the 45-day standard in the regulations for establishing a first payment due date for a borrower completing a deferment or forbearance period.

Changes: A change has been made in the regulations to require the lender to establish a first payment due date that is no more than 45 days following the expiration of the borrower's deferment or forbearance period.

Section 682.209(a)(3)(ii)

Comment: Several commenters noted that the regulations state that the first payment on a Stafford loan is due on a date established by the lender that is no more than 45 days following the first day of the month in which the repayment period begins. The commenters noted that this requirement would not be feasible for lenders that have day-specific servicing systems.

Discussion: The Secretary understands that some lenders use day-specific servicing systems and that the 9- and 12-month grace period is calculated on a day-specific basis. For lenders with day-specific systems or with loans that have a 9- to 12-month

grace period, the requirement that the first payment due date be no more than 45 days after the first day of the month in which the repayment period begins could result in that date being considerably sooner than 45 days after the end of the grace period.

Changes: The regulations have been revised to specify that a first payment due date established by the lender must be within 45 days of the end of the grace period or, if the lender learns, after the fact, that the borrower has entered the repayment period, no later than 75 days after the lender learns that the borrower has entered the repayment period.

Section 682.209(a)(4)

Comment: One commenter suggested adding a restriction in the last sentence of § 682.605(b)(3) of the regulations because he felt that the phrase "first failure to submit a lesson" was unclear and subject to misinterpretation.

Discussion: The Secretary agrees with the commenter that the reference to "first failure to submit a lesson" in § 682.209(a)(4) is unclear and might be interpreted to mean that the school may grant more than one restoration to in-school status. Under § 682.605(b)(3), a school may not grant a correspondence student more than one restoration to in-school status after the student fails to submit lessons in accordance with the established schedule.

Changes: The regulations have been changed to reflect that a school may provide a borrower with a one-time restoration to in-school status following the borrower's failure to submit a lesson within the 60-day period after the due date for submission.

Section 682.209(a)(6)

Comments: Many commenters suggested deleting the provision limiting the terms of graduated or income-sensitive repayment schedules. The commenters believe that the Secretary should not prescribe the terms of graduated or income-sensitive repayment schedules because this will limit lenders' use of this optional default management tool.

Discussion: The Secretary believes that the terms imposed on graduated or income-sensitive repayment schedules in § 682.209(a)(6) merely reflect long-standing Departmental policy prohibiting a schedule that includes large balloon payments. The Secretary believes that assisting a borrower in avoiding default early in the repayment period is meaningless if a graduated repayment schedule with unrealistically large payments precipitates a default later in the repayment cycle.

Changes: None.

Section 682.209(a)(7)(i)

Comment: Several commenters recommended deleting the last sentence regarding the 15-year repayment rule for Federally Insured Student Loans (FISLs) made for periods of enrollment before July 1, 1986. They believe this deletion is necessary because the Secretary indicated in the preamble of the NPRM his intention to waive violations of this rule for pre-1986 FISLs.

Discussion: The Secretary wishes to reiterate that the provision still applies and lenders must comply with it. Through his discussion in the preamble of the NPRM, the Secretary simply intended to clarify that he would waive any violation of this provision of the regulations

Changes: None.

Section 682.209(b)

Comment: Several commenters questioned the Secretary's proposed rule on how a borrower's prepayment of a FFEL program loan should be applied. The commenters recommended that the lender should be allowed to apply the prepayment to unpaid accrued interest before it is applied to unpaid principal. Several other commenters argued that not allowing the lender to apply the prepayment to late changes the borrower may have been assessed conflicted with standard banking practice.

Discussion: The Secretary understands that a borrower making a prepayment might have overdue accrued interest or late charges that have been assessed. The Secretary agrees that a lender receiving a prepayment should have the flexibility to apply the prepayment to cover outstanding interest or late charges before applying it to unpaid principal.

Changes: The final regulations have been amended to clarify that the lender may credit the prepayment first to late charges or collection costs, then to outstanding interest, and then to unpaid principal, unless the borrower otherwise specifies that the prepayment be applied to future installments or as a prepayment of principal.

Comment: Many commenters applauded the proposal that would allow a lender to credit prepayment that equal or exceed three full payments against future installment payments. Several commenters felt that lenders should be able to apply any amount received in excess of a full payment against future installments. Still other commenters favored retention of the existing requirement that lenders apply payments in excess of the amount due to reduce outstanding principal because of the financial benefit to the borrower.

Discussion: The Secretary recognizes the financial benefit to the borrower of having outstanding principal on the loan reduced as quickly as possible. The Secretary also believes, however, that a borrower who makes a large payment generally intends it to be used to satisfy future loan repayment installments. The Secretary believes that these regulations identify a realistic payment-amount-threshold that allows a lender to interpret the borrower's intent for a payment to be applied to future repayment installments. The Secretary also has decided that when a borrower makes such a large payment, without specifying how it should be applied, the lender should have the option to apply the payment either to future installments or as a prepayment of principal.

Changes: A change has been made to § 682.209(b)(2) to allow the lender, in the absence of direction from the borrower, to apply a payment amount that equals or exceeds three full payments under the repayment schedule either to future installments or as a prepayment of principal.

Section 682.209(c)(1)

Comment: Several commenters recommended that language be included in the regulations to distinguish between loans that have the $360 minimum annual repayment and loans that have the $600 minimum annual repayment. Several commenters suggested including the applicable dates these minimum annual repayment amounts became effective in the regulations to make the distinction.

Discussion: The minimum annual repayment was increased from $360 to $600 by the Postsecondary Student Assistance Amendments of 1981 (sections 531–540 of Pub. L. 97–35). The Secretary believes that it is unnecessary to include in the final regulations the $360 minimum annual repayment provision as no new loans are affected. All loans to which the $360 minimum annual repayment provision applies include the minimum annual repayment amount as a term of the promissory note.

Changes: None.

Section 682.209(f)(3)

Comment: Many commenters objected to the requirement that the promissory note be sent to the refinancing lender because consumer-banking laws dictate that the paid-in-full note be returned to the borrower. Other commenters objected to the requirement that lenders mail a certification statement to the refinancing lender within three days following receipt of a payment-in-full

due to refinancing. They believe this proposal would require that a separate payment system be developed to identify a refinanced payment. They indicated that these payments generally are processed through a lockbox. Therefore, most lenders are unable to identify a payment as a refinancing payment and would not be able to comply with the requirement.

Discussion: The Secretary proposed that the lender send the borrower's original promissory note to the refinancing lender as an alternate method of certifying that a borrower's fixed-rate loan had been discharged as provided for in section 428A(d)(4) and section 428B(d)(4) of the Act. However, the Secretary understands that the practice of forwarding an original paid-in-full promissory note to a party other than the borrower is contrary to consumer-banking laws and agrees that the use of this proposed option rather than a certification statement might result in the inadvertent loss of the borrower's promissory note. Therefore, the Secretary has decided to allow the use of a copy of the borrower's original promissory note evidencing the loan as the certification statement. The Secretary believes that the refinancing lender must receive timely notification that a borrower's original loan has been discharged. However, he agrees that three business days might be insufficient time for the original lender to apply the loan proceeds to discharge the original loan and mail the refinancing lender a certification to that effect. Although the Secretary recognizes that payments are generally processed through a lockbox system, and that this might make it more difficult to identify a refinancing payment, he believes that lenders must make the system changes necessary to post the payment and provide the required certification statement to the refinancing lender within the specified time limit.

Changes: Proposed § 682.209(f)(3)(i) has been deleted. However, lenders are still required to provide either a copy of the borrower's original promissory note evidencing the loan or a statement to the refinancing lender certifying the discharge of the original loan. See sections 428A(d)(4) and 428B(d)(4) of the Act. The regulations also have been revised to provide lenders with five business days to post a refinancing payment and provide the certification statement to the refinancing lender.

Section 682.209(h)

Comments: Several commenters noted that the regulations did not reflect section 428C(c)(2)(B) of the Act, which provides that unless a Consolidation loan is being used to discharge at least $5,000 of FFEL programs loans, the Consolidation loan must be repaid in not more than 10 years.

Discussion: The Secretary agrees; this provision of the statute inadvertently was not included in the NPRM. Moreover, the 1992 Amendments have changed this section of the statute to require that such a Consolidation loan must be repaid in not more than 12 years.

Changes: The regulations have been revised to include this statutory provision.

Section 682.209(i)(1)

Comment: A number of commenters objected to the proposal that a refund received by a lender from a school should be used to reduce the borrower's outstanding principal. The commenters stated that general accounting principles, as well as their own system requirements, would require that any outstanding interest be satisfied first. Other commenters felt that this requirement should apply only to Stafford loans because interest would have accrued on nonsubsidized Stafford, PLUS, and SLS loans.

Discussion: The Secretary wishes to note that interest accrues on all loans, but the Department pays the interest for certain periods on subsidized Stafford loans. The Secretary views refunds as "unused loan proceeds" that should be credited against the principal of the loan to create the maximum benefit for the borrower.

Changes: None.

Section 682.209(j)

Comment: A few commenters recommended that the 10-day time period for responding to a certification statement in connection with a Consolidation loan should be changed to 10 business days to allow for adequate auditing of all loan and payment records before issuing the certification.

Discussion: The Secretary agrees with the commenters.

Changes: The regulations have been changed to provide the lender 10 business days to provide the certification.

Section 682.210 Deferment

Comment: One commenter requested that the Secretary clarify why a 6-month certification limitation applies to some deferments (e.g., temporary total disability, dependent's temporary total disability, and unemployment) but not to others.

Discussion: The Secretary strongly believes that a deferment based on a condition that temporarily affects a borrower's ability to repay should be recertified periodically to assure the Secretary that the condition continues. He does not believe that the deferment should be granted automatically for the maximum statutory period as the borrower's situation might no longer warrant the deferment.

Changes: None.

Section 682.210(a)(4)(i)

Comment: The majority of commenters recommended permitting oral requests for deferments provided the lender is required to document these requests in the borrower's file. Many commenters felt that requiring a borrower to request a deferment in writing would delay significantly the time it takes to process a deferment.

Discussion: The Secretary agrees with the commenters that it is appropriate to allow the lender to accept the borrower's verbal request for a deferment since the lender may not grant the deferment until the borrower has submitted complete documentation supporting his or her eligibility for the deferment.

Changes: A change has been made. The Secretary has deleted "in writing" from § 682.210(a)(4).

Section 682.210(a)(4)(ii)

Comment: Many commenters supported the concept of allowing lenders to grant deferments based on substantially complete documentation. However, they did not agree with the NPRM proposal and recommended significant changes. Many commenters recommended that the Secretary define the term "substantially complete" because they felt it was overly ambiguous and would lead to inconsistent treatment of borrowers by different lenders. Many commenters objected to the operational difficulties they believe would be associated with retroactively canceling a 60-day "conditional" deferment and repaying interest to the Secretary if the borrower does not complete the deferment process. The commenters indicated that few lenders would choose to use this option because of these operational problems. They recommended instead that the 60-day conditional deferment period be retained even if the borrower does not provide the missing information; the borrower would be expected to resume repayment at the close of the 60-day period. A few commenters recommended that the lender be allowed to grant forbearance to the borrower until the borrower

submits the missing information rather than granting a 60-day deferment period that they might have to cancel.

Discussion: The Secretary agrees with the commenters that the term "substantially complete" is somewhat vague. However, the Secretary declined to be more prescriptive in the NPRM expressly to provide lenders flexibility in administering this provision. Further, he does not believe that the term can be defined effectively to address the many situations to which it may apply. The Secretary understands that the lender performs additional work if a borrower fails to provide missing information by the close of the 60-day conditional deferment period and the lender is required to cancel the deferment and repay interest payments paid to the lender by the Secretary. However, the Secretary does not believe that it is in the fiscal interest of the FFEL programs to allow the 60-day deferment period to stand if the borrower does not complete the deferment process. Further, the Secretary is persuaded by the commenters that few lenders will use this option as currently written. Therefore, the Secretary has decided to delete this provision from the regulations. Lenders are reminded that they may grant forbearance until the borrower submits the missing documentation. Once the lender receives complete documentation establishing the borrower's eligibility, a deferment can be granted based on the date the condition entitling the borrower to the deferment first existed in accordance with § 682.210(a)(5).

Changes: A change has been made. The proposal to allow lenders to grant a deferment based upon substantially complete information submitted by the borrower has been deleted from the regulations.

Section 682.210(a)(6)(iv)

Comment: Several commenters requested clarification of an apparent conflict between proposed § 682.210(a)(6)(iv) and § 682.210(c)(2) regarding the use of the anticipated graduation date (AGD) as the ending date of a Stafford and SLS student deferment. Additional comments included concerns that requiring a separate certification statement for the half-time student deferment represents unnecessary duplication since a condition for receipt of that deferment is that the borrower is also receiving a loan for the intended deferment period and, therefore, a loan application is required. Several commenters supported the proposal to treat a certified loan application as sufficient documentation for a student deferment up through the student's anticipated graduation date for (a) any SLS loan, and (b) a Stafford loan if the guaranty agency's student status confirmation report (SSCR) system includes a mechanism for the school's confirmation of the borrower's student deferment status. A number of commenters supported the concept of a yearly recertification for the student deferment if the guaranty agency does not have an SSCR system that includes a borrower's student-deferment status and emphasized that a yearly recertification of eligibility for the student deferment by the school would represent unnecessary work for schools, lenders, and guaranty agencies, and be a duplication of SSCR enrollment-verification data.

Discussion: The Secretary agrees with the commenters that the use of the loan application to request a student deferment, the use of the school's certification on the loan application to document the borrower's eligibility, and the use of the borrower's anticipated graduation date as the end date of the deferment represents an efficient and reasonably accurate method for granting a student deferment in the Stafford and SLS programs, provided the guaranty agency's student status confirmation report system provides status reports for each borrower with a student deferment. Further, the Secretary has decided that, in the interest of standardizing procedures and reducing the administrative burden associated with student deferments, this same approach should be extended to the PLUS program. The Secretary also agrees with commenters that proposed §§ 682.210(a)(6)(iv) and 682.210(c)(2) are inconsistent in describing the end date of a student deferment.

Changes: A change has been made to § 682.210(a)(6)(iv) to provide that the AGD date also should generally be considered the end date of a student deferment for a PLUS borrower. In addition, the language of proposed § 682.210(c)(2) that would have restricted the period of enrollment that may be certified in a single deferment certification to one academic year has been deleted from the regulations and § 682.210(c) has been revised to provide for the use of the loan application to request and document eligibility for a student deferment in the Stafford, SLS, and PLUS loan programs.

Section 682.210(b)(1)

Comment: A few commenters suggested that the regulations include a complete description of the eligibility requirements for what is popularly referred to as the "summer bridge" student deferment for continuously enrolled borrowers who do not attend classes during the summer months.

Discussion: The Secretary considers the summer months part of the in-school period for borrowers who are maintaining either an in-school status or a student deferment status and who plan to return to school in the fall. For borrowers in a student deferment status, particularly SLS borrowers, the Department has recommended that lenders collect a statement-of-intent-to-reenroll from the borrower to support the lender's continued cessation of collection activity otherwise required under the due diligence regulations during the summer months. The lender should continue to bill the Department for interest on Stafford loans during this period. If a borrower does not submit documentation supporting continued eligibility for a student deferment within 30 days of the start of the fall term, the lender is required to convert the borrower to repayment. Under these circumstances, the borrower is considered to have ceased enrollment on the last day of the previous spring term. However, the lender is allowed to treat the borrower as entering repayment without the lender's knowledge so that the borrower is not considered retroactively delinquent for a period during which he or she neither has been billed nor has an opportunity to pay. The lender is required to repay ED the interest paid on behalf of the borrower for the summer period. The interest may be capitalized pursuant to the regulations.

Changes: None.

Section 682.210(b)(1)(i)

Comment: Some commenters suggested replacing the term "school" with "eligible institution of higher education," and specifying that this includes vocational school and foreign schools. The commenters stated that they believed this would result in consistency between the requirements for a full-time student deferment and the definition of full-time student in § 682.200.

Discussion: The Secretary does not agree with the commenters. The definition of "school" found in § 682.200 properly reflects the statutory definition of "institution of higher education" in section 481 of the Act resulting from the 1992 Amendments.

Changes: None.

Section 682.210(b)(1)(v)

Comment: Some commenters suggested that the Secretary define "United States" for purposes of the unemployment deferment so that

lenders clearly understand which geographic areas are included.

Discussion: The Secretary believes it is unnecessary to define this term in the regulations. For purposes of this deferment, the Secretary clarifies that, consistent with the definition of State in 34 CFR 668.2, the United States includes borrowers residing in and seeking employment in any State of the Union, the Commonwealth of Puerto Rico, the District of Columbia, American Samoa, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Additionally, a U.S. military base or U.S. embassy compound in a foreign country is considered as "in the United States" for purposes of this deferment. A borrower who resides on a U.S. military base or U.S. embassy compound in a foreign country because his or her spouse is stationed there, and who is seeking employment, would be required to provide documentation roughly equivalent to that required in § 682.210(h)(1)(i). The "name of the firm" could be the "U.S. Military Base employment office" or "U.S. Embassy Personnel Office." The Secretary does not require those borrowers to comply with the requirement that they make six attempts to secure employment during the period of certification.

Changes: None.

Section 682.210(b)(4)

Comment: Some commenters suggested deleting the language referring to a borrower's attendance at a school that is operated by an agency of the Federal Government. The commenters recommended this change because students in the service academies do not qualify for FFEL program loans and are, therefore, ineligible for student deferments based on half-time enrollment.

Discussion: The Secretary recognizes that a condition of receiving a student deferment for half-time enrollment is that the borrower simultaneously be receiving a FFEL program loan. Since students attending the service academies, (and other federally-operated schools that do not participate in the FFEL programs) may not receive loans because these schools do not participate in the FFEL programs, they cannot qualify for this deferment.

Changes: The regulations have been revised. The language referencing schools operated by an agency of the Federal government has been deleted.

Section 682.210(b)(5)(iv)

Comment: One commenter suggested revising the rules dealing with the working-mother deferment. The commenter believes the regulations go beyond the statutory language by limiting eligibility for the deferment to only those individuals who apply for the deferment within one year of entering or re-entering the work force.

Discussion: The Secretary disagrees with the commenter. The statute clearly states that the deferment is "* * *for mothers with pre-school age children who are just entering or re-entering the work force* * *" (Emphasis added.) See section 428(b)(1)(M)(xi) of the Act. The Secretary believes that it is appropriate to define "just entering or re-entering" as within one year of entering or re-entering the work force on a full-time basis.

Changes: The Secretary is not revising the rules dealing with the working-mother deferment. However, the regulations are being revised to reflect that full-time employment involves at least 30 hours of work a week and is expected to last at least three months. This standard is consistent with the standard used in regard to the unemployment deferment.

Section 682.210(c)(1)(ii)

Comment: Many commenters stated that the proposed language would require both the registrar's and financial aid officer's signatures for half-time student deferments. They suggested that this places an unreasonable administrative burden on the borrower, school, and lender.

Discussion: The Secretary notes that for a new borrower applying for a student deferment, two conditions must be met. The borrower must obtain documentation from an authorized official of the school certifying at least half-time enrollment and a statement, or other documentation, from the financial aid administrator, indicating that the borrower has received or will receive a Stafford or SLS loan for the same period of enrollment for which the deferment is requested. Nothing in the regulations precludes the financial aid administrator, as an authorized official of the school, from certifying the student's half-time enrollment, based on information provided by the registrar. The borrower may provide other information, i.e., a copy of the certified loan application, promissory note, or notice-of-loan guarantee as evidence that the borrower has or will be receiving a loan for the same period.

Changes: The Secretary has revised § 682.210(c)(1)(ii) to permit the borrower to provide other documentation evidencing that the borrower has received or will be receiving a Stafford or SLS loan for the same period for which the deferment is requested.

Comment: Several commenters suggested that the borrower be allowed to provide the necessary proof that he or she has obtained a new loan for the period covered by the student deferment.

Discussion: The Secretary agrees with the commenters that allowing the borrower who applies for a student deferment to provide proof that he or she has obtained a new loan for the same period would lessen the administrative burden. The Secretary believes that a copy of the lender's notice-of-loan-guarantee or a copy of the application containing the school's certification would be acceptable documentation that the borrower has received or will receive a Stafford or SLS loan for the period of enrollment for which the deferment is sought.

Changes: The Secretary has revised the regulations, as noted earlier, to permit a borrower to document eligibility for a student deferment by submitting evidence that a loan has been received.

Section 682.210(c)(1)(iii)

Comment: One commenter recommended that the Department's current policy that deferment applications be prescribed by the guaranty agency be changed. The commenter asked that the Department prescribe the use of standard deferment forms. The commenter believes that the Department is in the best position to develop a standard format for all deferment forms and that standardization would ease the administrative burden on schools. The commenter also believes that the use of standard deferment forms prescribed by the Secretary would contribute to the goal of greater automation in the administration of the FFEL programs and to the development of the National Student Loan Data Base.

Discussion: The Secretary understands the commenter's preference for the standardization of various FFEL program documents, especially as they relate to the Department's move toward enhanced methods of electronic processing and the development of the National Student Loan Data Base. As a result of a change made in section 432(m)(2) of the Act by the 1992 Amendments, the Secretary is required to work with representatives of guaranty agencies, institutions of higher education, and lenders to develop and prescribe a common deferment reporting form.

Changes: Section 682.401(d)(3) of the regulations have been revised to specify

that guaranty agencies must use common forms, including common deferment forms, approved by the Secretary.

Section 682.210(f)(2)

Comment: Some comments suggested that the Secretary clarify that pregnancy is not considered a disabling condition unless extraordinary circumstances are certified by the physician.

Discussion: The Secretary restates his prior guidance that "temporarily totally disabled" is defined in section 435(g) of the Act as referring to a borrower "* * * who, by reason of *injury or illness*, cannot be expected to be able to attend an eligible institution or to be gainfully employed during a reasonable period of recovery from such injury or illness not to exceed 3 years." (Emphasis added.) Since the statute specifically uses the term "by reason of injury illness," this deferment does not include all medical conditions. A healthy pregnancy is neither an injury nor illness and does not satisfy the requirements for a deferment.

The Secretary recognizes that during pregnancy there may be a period of time during which the borrower is unable to continue to attend school. The Secretary encourages lenders and guaranty agencies to grant forbearance to borrowers in these circumstances.

Changes: None.

Section 682.210(h)(1)(i)

Comment: Several commenters recommended deleting the requirement that a borrower seeking an unemployment deferment provide the names or titles of the people contacted as part of the borrower's conscientious search for employment. The commenters believe this requirement is burdensome and of little or no benefit to the borrower.

Discussion: The Secretary strongly disagrees. The Secretary expects an unemployed borrower to make a truly conscientious effort to secure employment. The Secretary believes that this involves making personal contact, either by phone or in person, with key personnel of potential employers, not just submitting resumes or job applications to those employers. The Secretary believes that if a borrower is not required to provide this information there is no evidence that a contact was made. However, the Secretary has decided to amend the regulations to provide that a lender may also accept, as evidence of employer contacts, documentation the borrower has provided to meet the requirements of the Unemployment Insurance Service if the documentation shows the same number of contacts and contains the same information that the borrower would be required to provide under the Department's regulations.

Changes: The regulations have been revised to provide that a lender may accept alternative documentation of employer contacts made to meet the requirements of the Unemployment Insurance Service.

Comment: Several commenters recommended inserting "during the preceding six months, except in the case of the initial period of unemployment" after "conscientious search for full-time employment." They suggested that this change clarifies that the borrower is to identify employers whom they already have contacted as opposed to listing potential future contacts. The commenters believe this avoids requiring that the deferment always be back-dated.

Discussion: The Secretary agrees that the attempts to secure employment for a given certification period should reflect contacts already made rather than potential contacts.

Changes: The Secretary has revised the regulations to adopt the recommended language.

Section 682.210(h)(1)(iii)

Comment: Several commenters suggested that the Secretary define what is considered an "accessible" public or private employment agency because they did not believe it was reasonable to expect an unemployed borrower to travel to the nearest public or private employment agency regardless of the distance involved. Some commenters recommended using a 50-mile radius as a reasonable distance to expect an unemployed borrower to travel.

Discussion: The Secretary believes that it is reasonable to expect a borrower to make a good-faith effort to register with a public or private employment agency as part of his or her employment search. However, the Secretary agrees with the commenters that for an unemployed borrower this requirement is reasonable only if the borrower does not have to travel long distances to register with an agency. Further, the Secretary believes that employment opportunities listed by an agency a significant distance from the borrower's home may not be realistic prospects if getting to work sites involves significant travel.

Changes: The Secretary has revised the regulations to reflect that a borrower must register with such an agency if one is within a 50-mile radius of the borrower's permanent or latest temporary address.

Section 682.210(h)(3)

Comment: One commenter recommended that the Secretary reinstate language found in current regulations in this section that provides that an unemployment deferment is not justified if a borrower refuses to seek or accept employment "in kinds of positions or at salary and responsibility levels for which the borrower feels overly qualified by virtue of education or previous experience." The commenter stated that this wording had been helpful in the administration of this provision. Other commenters supported the concept that an unemployed borrower should not be overly restrictive in his or her search for employment, but also felt that a borrower should be allowed to take certain professional considerations into account in that search. They believe that someone trained for, or who has been employed in, a specific professional area should be able to pursue employment in that career.

Discussion: The Secretary agrees that the language deleted from this provision in the NPRM is intended to establish a requirement that a borrower cannot refuse work based on certain preferences. The Secretary does not agree with those commenters who believe that an unemployed borrower should be allowed to take into account professional preferences in his or her job search. The Secretary believes that a borrower is responsible for repayment of a FFEL program loan and should not expect the Secretary to subsidize the borrower's search for the best professional opportunity. The Secretary understands that this may require a borrower to accept temporary or less desirable employment in order to make payments on the loan while continuing a long-term search for a better job opportunity.

Changes: The Secretary has revised the regulations to include the phrase deleted from the NPRM.

Section 682.210(i)

Comment: Numerous commenters recommended that borrowers attempting to qualify for a military deferment should be allowed to provide the lender with a copy of his or her official military orders in lieu of a "written" statement from the borrower's commanding or personnel officer.

Discussion: The Secretary agrees that a lender should be able to use information from the borrower's military orders to document that the borrower is eligible for a military deferment.

Changes: The Secretary has revised the regulations to allow a borrower to

document eligibility for a military deferment by providing either a "written" statement from the commanding or personnel officer or a copy of his or her official military orders and official military identification.

Comment: Several commenters recommended that proposed § 682.210(i)(3) be revised to provide that under certain circumstances military reservists serving on active duty for less than one year would be eligible for a military deferment. The commenters noted that many reservists that were called to active duty in Operation Desert Shield or Operation Desert Storm would not qualify for a military deferment based on the proposed regulations. The commenters recommended that the Secretary provide for flexibility in the regulations to address these types of situations.

Discussion: The Secretary agrees with the commenters that the regulations should be revised to give lenders the ability to react in a timely fashion to circumstances in which the normal one-year requirement for active duty might not be appropriate.

Changes: The language of § 682.210(i)(3) has been revised to specify that a reservist called to active duty would be expected to serve on a full-time basis for at least one year unless an order for national mobilization of reservists is issued.

Section 682.210(m)

Comment: Some commenters objected to the limitation on the compensation rate for full-time volunteers serving with tax-exempt organizations to qualify for a deferment as proposed in § 682.210(m)(1)(iii) of the regulations. The commenters stated that restricting the compensation rate to one that does not equal or exceed the Federal minimum wage was inconsistent with the statutory intent that these volunteers be treated as performing service comparable to service performed by volunteers in the Peace Corps and ACTION programs because volunteers in those programs are compensated at a rate consistent with the Federal minimum wage. Another commenter indicated that this restriction was in conflict with the President's active support of volunteerism. Still another commenter indicated that many individuals working for tax-exempt organizations would be ineligible for the deferment if the organizations' by-laws required that individuals serving with the organizations be paid the Federal minimum wage.

Discussion: Sections 427(a)(2)(C) and 428(b)(1)(M) of the Act were amended by the 1992 Amendments to reduce the different types of deferments available to FFEL borrowers. In particular, the new law provides new borrowers, whose first disbursement is made on or after July 1, 1993, with the following types of deferment: (1) Student deferment, (2) graduate fellowship deferment, (3) rehabilitation training program deferment, (4) unemployment deferment, and (5) economic hardship deferment. For purposes of these deferments, a new borrower is one who, on the date of application, has no outstanding balance of interest or principal on a Stafford, SLS, or PLUS loan or, in the case of a Consolidation loan applicant, has no outstanding balance on any other FFEL program loan obtained prior to July 1, 1993. The term economic hardship is defined in the statute as circumstances under which a borrower is working full-time and is earning an amount that does not exceed the greater of the minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938 or an amount equal to 100 percent of the poverty line for a family of two as determined in accordance with section 673(2) of the Community Service Block Grant Act, or under other criteria identified by the Secretary in regulations. Because this definition provides for a compensation rate that is at least the Federal minimum wage and new borrowers serving as volunteers in tax-exempt organizations may be eligible for this deferment based on this criteria, the Secretary believes that the same standard of compensation should apply to borrowers subject to the previous deferment provisions.

Changes: The phrase "or equals" has been deleted from § 682.210(m)(1)(iii).

Section 682.210(n)

Comment: One commenter suggested clarifying the definition of "internship or residency." The commenter indicated that these terms can refer to any profession and believe it is necessary to specify which professions satisfy the requirements for this deferment.

Discussion: The Secretary does not believe that it is necessary to define these terms. An internship or residency deferment may be provided to borrowers in any profession that meets the regulatory requirements.

Changes: None.

Section 682.210(o)(1)

Comment: A few commenters suggested revising the eligibility criteria for a parental-leave deferment so that a Stafford loan borrower may qualify for the deferment without being required to forego a portion of his or her grace period. A Stafford loan borrower does not enter repayment until his or her six-month grace period has elapsed. At that time, the borrower would not have been enrolled at an eligible institution during the preceding six months, as required for the deferment. The commenters believe that by relaxing this criterion the Department will ease the lender's task of securing a borrower's authorization to waive voluntarily a portion of his or her grace period so the deferment can be processed.

Discussion: Section 435(h)(3) of the Act clearly requires that to qualify for a parental-leave deferment the borrower has to be enrolled at least half-time at an eligible institution during the preceding six months. The Secretary cannot waive these statutory requirements. The Secretary previously has issued guidance to lenders indicating that they may advise a borrower that he or she voluntarily may waive a portion of the grace period to qualify for the deferment.

Changes: None.

Comment: Several commenters recommended that the phrase "or the borrower's spouse is pregnant * * *" be deleted from the eligibility criteria for the parental-leave deferment. The commenters stated that the pregnancy of a borrower's spouse did not appear to be covered by section 435(h) of the Act.

Discussion: The Secretary agrees with the commenters that the Act does not extend to cover the pregnancy of a borrower's spouse.

Changes: The phrase has been deleted from the regulations.

Comment: One commenter noted that in many adoption cases the child is placed in the home before the completion of the adoption process. The commenter recommended that the regulations be revised to ensure that a borrower on leave as part of a preadoption placement is eligible for the parental-leave deferment.

Discussion: The Secretary believes that a borrower who takes leave from employment in conjunction with the adoption process should be eligible for the parental-leave deferment regardless of whether the leave occurs before or immediately following the official adoption date.

Changes: The regulations have been revised to permit a borrower to qualify for the parental-leave deferment during the period the borrower cares for a child immediately following placement of the child with the borrower in connection with an adoption.

Section 682.210(r)(2)

Comment: Many commenters objected to the documentation required to support a borrower's eligibility for the working-mother deferment. They

believe it represents a significant burden on the borrower and that the documents cannot be obtained easily. The commenters suggested that the borrower be allowed to self-certify the information necessary to qualify for the deferment.

Discussion: The Secretary notes that a borrower is required under § 682.210 "to provide the lender with all information and documents required to establish eligibility for a specific type of deferment." The Secretary believes that allowing a borrower to self-certify eligibility for the working-mother deferment fails to meet this requirement. The Secretary considers that the documents the borrower is required to submit to support eligibility (e.g., a photocopy of child's birth certificate documenting the child's age and a pay stub or similar document showing her pay rate) represent minimal requirements and are obtained easily.

Changes: None.

Comment: One commenter suggested that the benefits of the working-mother deferment should be extended to single fathers who also meet the eligibility criteria for the deferment.

Discussion: The provisions of section 428(b)(1)(M)(xi) of the Act clearly restrict the working-mother deferment to mothers.

Changes: None.

Section 682.211 Forbearance

Section 682.211(a)(2)(i)

Comment: A few commenters recommended the deletion of the requirement that the lender document that the borrower intends to repay the loan as a condition for granting forbearance. The commenters believe this affirmation by the borrower serves no purpose. They believe it adds no further creditability to the information submitted by the borrower to support the forbearance.

Discussion: The Secretary believes that forbearance should be granted only to borrowers who are willing to repay their loans but temporarily are unable to make payments due to medical or other acceptable circumstances. The proposed additional documentation requirement forces the lender to ensure that the borrower states his or her intention to repay the loan as well as providing a record of the factors that support the lender's decision to grant the forbearance. The lender is being required simply to document the borrower's willingness to repay.

Changes: None.

Section 682.211(b), (c), and (d)

Comment: Many commenters opposed the proposal to treat a forbearance granted after default differently from other types of forbearance, i.e., a post-default forbearance would not extend the 10-year repayment period and the minimum annual repayment provisions would apply. The commenters indicated that this would require the lender to develop a separate tracking system for borrowers granted forbearance after default. Several other commenters questioned the need for specifying that a lender must grant a forbearance on terms that are "consistent with" or "inconsistent with" the 10-year repayment and the minimum annual repayment provisions and requested that the Secretary simplify the forbearance provisions. Still other commenters recommended that the Secretary specify that a lender does not have to sign a forbearance agreement with a borrower in offering the borrower a graduated repayment schedule that provides for payments that total less than the minimum annual payment amount. The commenters believe that requiring a signed forbearance agreement would discourage lenders from offering the graduated repayment option to borrowers.

Discussion: The Secretary agrees that developing and maintaining separate tracking systems for different types of forbearances would be administratively burdensome and complicate significantly the use of forbearance to assist a borrower in avoiding default. The Secretary also agrees that a lender should be able to offer a borrower a graduated repayment schedule that provides for payment of less than the minimum annual repayment amount without executing a forbearance agreement with the borrower.

Changes: The Secretary has deleted all reference to repayment terms that are consistent or inconsistent with the minimum annual payment requirement and the 10-year maximum repayment period in § 682.211(b), § 682.211(c), and § 682.211(d) of the regulations. Section 682.209(a)(6)(ii) of the regulations has also been revised to provide that a lender may offer a borrower a graduated repayment schedule without completing an agreement as specified in § 682.209(c)(1)(ii).

Comment: Several commenters recommended that the regulations be revised specifically to provide that, upon notice to a borrower, a lender may grant forbearance in circumstances similar to the Operation Desert Shield or Operation Desert Storm action in which contact with a borrower might be impossible.

Discussion: The Secretary agrees that specific guidance should be incorporated into the regulations to ensure that lenders react in a timely manner to situations such as Operation Desert Shield or Operation Desert Storm in the future.

Changes: The regulations have been revised in § 682.211(f) to provide that, upon notice to a borrower, forbearance may be granted by a lender in the event of a national military mobilization or other national emergency for a period authorized by the Secretary.

Section 682.211(f)

Comment: Several commenters recommended that a lender be allowed to grant forbearance for the period prior to the borrower filing a bankruptcy petition. The commenters noted that, without this change, lenders would only be able to approve forbearance from the date the borrower files the bankruptcy petition when the borrower might already be severely delinquent.

Discussion: The Secretary agrees that lenders should be provided with the option of offering forbearance to a borrower to cover this period. The Secretary believes this would assist in the handling of delinquencies for borrowers who, after a significant period of time, emerge from a stay of collections associated with the bankruptcy process and are again subject to collection.

Changes: A new provision has been added to § 682.211(f) to permit a lender to grant a forbearance for a period prior to the borrower filing a bankruptcy petition.

Section 682.213 Prohibition Against the Use of the Rule of 78s

Comment: Some commenters recommended that this section be expanded to include guidance on loans previously approved using the Rule of 78s to calculate the outstanding principal balance of the loan.

Discussion: The Secretary continues to receive questions on this issue and agrees that the regulations should recognize loans on which the principal balance was previously calculated using the Rule of 78s.

Changes: The regulations have been revised to recognize that the Rule of 78s still might apply to loans that entered repayment before June 26, 1987 that had the principal balance calculated using the Rule of 78s. The Rule of 78s would be used for the life of the loan.

Section 682.214 Compliance With Equal Credit Opportunity Requirements

Comment: A number of commenters recommended that this section be modified to include all the FFEL programs, rather than having it apply just to the Stafford Loan Program.

Discussion: The Secretary has been advised by the Federal Reserve Board that the regulations as currently written comply with Regulation B, 12 CFR part 202. The PLUS program does not meet any of the criteria of 12 CFR 202.8, and neither PLUS nor SLS meet the criteria of 12 CFR 202.8(d) of Regulation B.

Changes: None.

Section 682.215 Defenses to the Borrower's Obligation To Repay a GSL Loan

Comment: Many commenters indicated that they believed that lenders must have a clearly protected right to repayment by borrowers even if the borrower's school violates its obligations to its students. The commenters recommended that the regulations be modified to state that lenders would be subject to a borrower's defense against repayment of a loan based on school misconduct only if a written origination contract existed between the school and lender, or the school, with the consent of the lender, completes the lender's section of the loan application on behalf of the lender. These same commenters supported the proposed use of a disclaimer to inform borrowers that lenders are generally not responsible for school misconduct. They recommended that the definition of "origination" in 34 CFR 682.200 be modified to delete reference to a "special" relationship and the examples provided in the definition because the regulations would specify the circumstances under which a defense would apply. Several other commenters recommended defining what does not constitute an "origination relationship" rather than what does. Many other commenters stated that they agreed that the quality of a school's performance and the employability of its graduates should not provide a borrower with a defense to repayment of a loan. However, these commenters indicated that the proposed regulations still held borrowers financially responsible for most cases of school fraud and recommended that the Secretary take direct responsibility in the final regulations for borrowers harmed by school fraud or school closings. Several commenters indicated that they believed that the regulations provided insufficient protection to borrowers from a school's failure to comply with Title IV refund requirements. Two other commenters strongly objected to the proposed section, saying that it did not provide adequate consumer protection for borrowers and recommended deletion of the section. The commenters stated that the use of the disclaimer notice by the lender made it virtually impossible for a borrower to ever raise such a defense and thereby rendered the borrower's rights illusory.

Discussion: After considering the comments on this proposed section and the Department's experience in this area, the Secretary has decided that it is not desirable at this time to prescribe in regulations a uniform Federal rule regarding borrower defenses that would preempt State law otherwise applicable to the FFEL programs. The Department believes that the determination of whether a defense under State law is available to a borrower requires a case-by-case assessment of whether individual State laws would frustrate accomplishment of the Federal objectives of the FFEL program. The Department, as a result of its litigation experience, has identified four kinds of State laws whose application would not frustrate FFEL program policies and are therefore not preempted by Federal law. These are State laws that would make a lender subject to school-related defenses against the repayment of the loan if: (1) The lender has notice (actual or imputed) of substantial prior unresolved complaints about the school prior to making the loan; (2) the lender has delegated substantial loan making functions to the school (an "origination relationship"); (3) the lender and the school are corporate affiliates or are otherwise commonly controlled; and (4) the lender paid a finder's fee or referral fee to the school with regard to the loan. Consistent with this approach, the term "origination" in proposed § 682.200 has been revised to be "origination relationship." The Secretary has also decided to describe an "origination relationship" as a special business relationship between a school and a lender so as to distinguish it from the relationship that exists between these parties as part of the normal loan processing and delivery system. In addition, the Secretary notes that the 1992 Amendments have amended the Act to provide for the discharge of loans for a student who received a loan on or after January 1, 1986 and who was unable to complete a program of study in which he or she was enrolled due to the school's closure or if the student's eligibility for a loan was falsely certified by the school. These provisions will be reflected in future regulations developed as a result of the 1992 Amendments.

Changes: The Secretary has deleted the provisions of § 682.215. The term "origination" in proposed § 682.200 has been revised to "origination relationship." Further, the regulations have been revised to describe an "origination relationship" as a special business relationship.

Section 682.300 Payment of Interest Benefits on Stafford Loans

Section 682.300(b)(2)

Comment: Several commenters suggested that the Secretary modify the proposed regulatory provision requiring interest on loan proceeds transferred electronically to cease on the 120th day if the school has not released the funds from the school's restricted account. The commenters argued that the lender would have no way of knowing if funds are released and might incur a violation based on an event controlled by the school and not by the lender. The commenters suggested defining the date that interest benefits cease as the date funds are returned to the lender. Other commenters suggested that processing time is needed after loan proceeds are returned to the lender and recommended that 10 business days be provided for that purpose.

Discussion: The Secretary believes that 120 days is sufficient time for a school to return funds from its restricted account to the lender and for the lender to complete any required processing. Lenders must have a system in place to monitor the release of loan proceeds to ensure that funds are not delivered after 120 days.

Changes: None.

Comment: One commenter stated that § 682.300(b)(2)(iii) and § 682.300(b)(2)(iv) are confusing. The commenter indicated that the event causing the claim to be filed, *i.e.*, default, always would be earlier than the date the lender receives payment on a claim for loss on the loan. Thus, the Secretary's obligation to pay interest benefits always would cease on the date of default.

Discussion: There are special conditions, such as school closings, in which default claims must be filed with the guaranty agency. In these cases, the loan is in default only for the purpose of allowing the lender to receive an insurance payment. The borrower is not considered to be in default as defined in section 435(1) of the Act, and a lender may not report to any credit bureau or other third party that the borrower is in default on the loan.

Changes: None.

Section 682.301 Eligibility of Borrowers for Interest Benefits on Stafford Loans

Comment: One commenter suggested that the Secretary clarify that it is the school's responsibility to determine whether a borrower is a member of a

religious order and, if so, to notify the lender that the borrower is ineligible to receive interest benefits. Another commenter asked whether this determination would have to be made for every applicant that indicates a religious affiliation on a school application or other form.

Discussion: The Secretary wishes to clarify that these regulatory provisions are intended to mirror similar provisions that have existed in other Title IV programs for a number of years. See § § 673.22(a)(5), 674.9(c), 675.9(c) and 676.9(c). They are not intended to apply to every applicant that responds to a question on religious affiliation. In determining an applicant's eligibility for interest benefits, if the school has received information indicating that the applicant is a member of a religious order, group, community, society, agency, or other similar organization, it is required to document whether the conditions detailed in in § 682.301(a)(2) apply to the applicant. In the Secretary's view, service in such an order generally reflects that the individual is supported fully by the order and does not have financial need for FFEL purposes. A school is not expected to make a determination unless it has reason to know that an applicant is a member of such an order and meets the criteria specified in § 682.301(a)(2). The school must document its determination and place it in the student's file.

Changes: None.

Section 682.301(b)

Comment: One commenter argued that § 682.301(b) seems to require the student to submit the loan application directly to the lender and, therefore, unduly restricts the use of automated application processing. The commenter urged the Secretary to clarify that a school may submit a loan application directly to the lender at the borrower's request.

Discussion: The Secretary did not intend in § 682.301(b) to require a borrower to submit a loan application directly to a lender.

Changes: A change has been made. The Secretary has modified § 682.301(b) to clearly state that a school may transmit a loan application to an eligible lender at the direction of the borrower.

Section 682.301(c)

Comment: One commenter suggested that § 682.301(c), concerning use of loan proceeds to replace EFC, should also clearly indicate that borrowers may use aid from private and State-sponsored programs.

Discussion: The Secretary agrees with the commenter. Section 428(a)(2)(E) of the Act provides for the EFC to be offset by loans made under the SLS, PLUS, State-sponsored, or private loan programs.

Changes: A change has been made. The Secretary has revised § 682.301(c) to reflect the requirements of section 428(a)(2)(E) of the Act. In addition, the Secretary is codifying current policy that allows the use of a nonsubsidized Stafford loan to replace the student's EFC.

Section 682.302 Payment of Special Allowance on FFEL Loans

Section 682.302(d)

Comment: Many commenters opposed the Secretary's proposal to terminate a lender's eligibility for special allowance payments 45 days after the borrower's default on the loan unless the lender had filed a default claim with the guaranty agency by the 45th day. The commenters felt that 45 days would not provide sufficient time for a lender to compile all the required documents for a default claim, particularly given the new requirement that a payment and collection history be part of the default claim filed with the guaranty agency. The commenters felt that the current 90-day standard with full interest and special allowance benefits should be retained.

Discussion: The Secretary notes that a lender may continue to file a default claim with the guaranty agency within 90 days of default under the provisions of § 682.406(a)(5). The Secretary intended, through this proposal, to restrict the payment of special allowance to the lender to 45 days after the borrower's default on the loan if the lender did not submit the default claim to the guaranty agency by the 45th day. However, the Secretary agrees with the commenters that the 45-day deadline for submission of a default claim package for the lender to retain special allowance after the 45th day may not provide sufficient time to prepare and submit a default claim package in light of the new documentation requirements for claim submissions. Therefore, the Secretary has decided to change the 45-day deadline to a 60-day deadline. The regulations will now restrict the payment of special allowance to the lender to 60 days after the borrower's default on the loan if the lender does not submit the default claim package to the guaranty agency by the 60th day. Additionally, to provide lenders with extra time to adjust to this provision, the Secretary has decided to delay the effective date of the provision. The provision will become effective for loans for which the first day of delinquency is on or after 120 days following the date of publication of the regulations.

Changes: The Secretary has amended the regulations to allow a lender to maintain eligibility for special allowance payments if the lender submits a claim to the guaranty agency within 60 days of the date of default.

Comment: Several commenters disagreed with the Secretary's proposal to terminate special allowance on the date the guaranty agency returns a claim to a lender for additional documentation. These commenters felt that eligibility for special allowance should continue until the claim is paid.

Discussion: The Secretary agrees with the commenters and has decided to revise the regulations so as not to penalize a lender by terminating special allowance on an otherwise eligible loan if it is returned by the guaranty agency due to inadequate documentation. If the loan had not been submitted by the lender by the 60th day after default, it already would have lost eligibility for special allowance and being returned because of inadequate documentation would not re-establish eligibility for special allowance. If a loan is rejected by the guaranty agency because of a due diligence or timely filing violation, eligibility for special allowance already would have been lost as of the date of the violation.

Changes: The regulations have been revised to reflect that an otherwise eligible loan may continue to receive special allowance if it is resubmitted by the 30th day after the loan was returned to the lender by the guaranty agency solely because of inadequate documentation. If the loan is submitted after the 30th day, but by the 60th day, the loan is reinsured but special allowance is limited to the 30th day after the loan is returned by the guaranty agency due solely to inadequate documentation. If an otherwise eligible loan is not resubmitted by the 60th day after being returned to the lender by the guaranty agency, the timely filing violation must be cured by the lender using the procedures in Bulletin 88–G–138 (appendix D).

Comment: One commenter stated that the provisions of § 682.302(d)(vii) conflicted with § 682.406(a)(7). These two sections reflect that special allowance terminates on returned claims at a different time than the period during which interest is paid.

Discussion: The Secretary disagrees with the commenter. Section 682.302(d)(vii) specifies one of the conditions under which special allowance payments will terminate.

Section 682.406(a)(7) outlines the conditions of reinsurance coverage and specifies the maximum length of time the Secretary will pay interest on a reinsured claim.

Changes: None.

Section 682.304 Methods for Computing Interest Benefits and Special Allowance

Section 682.304(b)

Comment: One commenter noted that § 682.304(b)(2) is inconsistent with § 682.304(c). The commenter suggested that the 365.25-day calculation method should be used in the average daily balance method as well as in the actual accrual method.

Discussion: Section 682.304(b)(2) prescribes the calculation method that the Secretary will use to determine the average daily balance for interest benefits unless the lender chooses to use the actual accrual method. A lender chooses the average daily balance method by not completing ED Form 799, part III, Column E, entitled "Interest benefits." Completion of this part of the form is optional. If the lender chooses to complete the interest section, it may use the 365.25-day calculation method. If the lender chooses not to complete the interest section, the Secretary will use the calculation method prescribed in 34 CFR 682.304(b)(2) to compute interest benefits.

Changes: None.

Section 682.304(d)

Comment: One commenter suggested that the Secretary should clarify that the calculation in § 682.304(d)(1) represents the average daily balance for the quarter for qualifying loans at each applicable interest rate.

Discussion: The Secretary agrees with the commenter's suggestion.

Changes: A change has been made. Section 682.304(d)(1) has been revised to clarify that the average daily balance calculation for the quarter represents qualifying loans at each applicable interest rate.

Section 682.305 Procedures for Payment of Interest Benefits and Special Allowance

Section 682.305(a)(4)(ii)

Comment: Many commenters were opposed to the Secretary's proposal to make the buyer and the seller jointly and severally liable for payment of origination fees. The commenters argued that the buyer paid the seller for outstanding origination fees at the time of the sale and that the buyer should be liable only if the loans were bought in the same quarter in which they were originated.

Discussion: The proposed regulations codify the Secretary's long-standing view that if a loan is assigned the assignee and assignor have equal responsibility to ensure that origination fees are paid to the Secretary. Bulletin 91-L-142, dated October 1991, reiterated this requirement, reminding chief executive officers of entities that make, sell, and buy Stafford loans that origination fees should be paid in a timely manner. For operational purposes, the regulations allow either the buyer or the seller to report the amount of the origination fee to the Secretary if the loan is originated and sold within the same quarter. It is assumed that if a loan is sold in a quarter after the one in which it was originated, the originating lender would already have reported the amount of the origination fee to the Secretary.

Changes: The Secretary has modified § 682.406(a)(12) to specify that the payment of origination fees is a condition of reinsurance. However, the Secretary will apply this sanction only if the purchasing lender refuses to pay outstanding origination fees on loans it has purchased.

Section 682.305(b)(1)(ii)

Comment: Several commenters argued that § 682.305(b)(1)(ii) should be revised to clarify that, for penalty interest purposes, the payment of interest benefits begins on the date on which payment actually is made by the Treasury Department rather than the date on which the Secretary authorizes the Treasury Department to pay the lender.

Discussion: Section 682.305(b)(1)(ii) is based on section 438(b)(4) of the Act, which provides that the calculation of the time period ends on the date the Secretary authorizes payment.

Changes: None.

Comment: Several commenters argued that penalty interest should not be limited to the special allowance rate applicable to loans made on or after November 16, 1986, *i.e.*, Treasury bills plus 3.25 percent. The commenters suggested that the Secretary reimburse the lender for the actual special allowance factor as authorized by the Act.

Discussion: The Secretary agrees that the penalty interest calculation should be based on the actual interest and special allowance rates. He also believes that it is necessary to clarify how reductions to interest and special allowance payments (e.g., reductions for origination fees or other debts owed to the Federal government) will be accommodated in penalty interest calculations.

Changes: The Secretary has modified the regulations to base penalty interest calculations on actual interest and special allowance rates.

Section 682.305(b)(6)(iv)

Comment: A few commenters suggested that the Secretary include the phrase "unless the Secretary authorizes an exception in writing" at the end of § 682.305(b)(6)(iv).

Discussion: Proposed § 682.305(b)(6), which is now § 682.306(b)(5), specifically identifies the circumstances in which the Secretary considers a request from a lender for payment of interest and special allowance to be inaccurate and incomplete. The Secretary does not anticipate permitting any exceptions to these requirements.

Changes: None.

Section 682.305(c)

Comment: Many commenters objected to the Secretary requiring an independent audit of a lender's loan portfolio if the lender originates in excess of, or its loan volume exceeds, $10 million. The commenters stated that large lenders are audited extensively by their own auditors, guaranty agencies, and the Federal government, and this requirement only would produce unnecessary financial expense and burden for lenders. Other commenters stated that an audit every two or three years is sufficient. Several commenters objected to the proposed requirement that the audit report be submitted within 90 days of the end of the Federal fiscal year. The commenters did not believe that this was sufficient time to conduct an audit of this scope and complete and submit the required audit report to the Secretary.

Discussion: The 1992 Amendments require that each lender participating in the FFEL programs have an annual independent compliance audit conducted by a qualified independent organization or person. The regulations have been changed to reflect this new requirement. In addition, the Secretary agrees with the commenters that 90 days after the end of the Federal fiscal year may not be sufficient for conducting the audit and completing and submitting the audit report. The Secretary has decided to require that the audit report be submitted within six months following the end of the audit period. However, the Secretary will monitor the implementation of this requirement closely to determine if this period can be reduced in the future.

Changes: A change has been made. The Secretary has revised § 682.305(c)

to require all lenders to conduct an annual compliance audit by a qualified independent organization or person. The audit must be submitted to the Secretary within six months following the end of the audit period. The Secretary also is requiring that the first audit cover the lender's first fiscal year that begins after July 23, 1992.

Comment: A number of commenters opposed the requirement that the independent financial and compliance audit period be based on the Federal fiscal year.

Discussion: The Secretary understands that this requirement would represent a significant administrative burden for lenders that do not use the Federal fiscal year and are required to conduct audits to comply with other Federal or State requirements. To prevent having to conduct more than one audit, the lender would be required to conduct one audit to cover all program operations occurring within the three months overlapping separate audit periods.

Changes: The Secretary has revised the regulations to allow lenders to use an alternative audit period to the Federal fiscal year to conduct the annual compliance audit.

Comment: A few commenters noted that nonprofit and State government lenders are subject to the provisions of Office of Management and Budget (OMB) Circular No. A–133 that provides that a single audit of the entity's participation in all Federal programs satisfies the audit requirement of all of those programs. The commenters suggested that nonprofit and State lenders be exempt from the proposed audit requirement in § 682.305(c).

Discussion: The Secretary agrees with the commenters. An additional independent audit of nonprofit and State government lenders' administration of the FFEL programs would create an additional financial burden if the lenders are subject to the single Federal audit requirement.

Changes: A change has been made. The Secretary has revised 34 CFR 682.305(c)(2) to exempt nonprofit and State government lenders from the audit requirement if an audit, in accordance with 31 U.S.C. 7502 and OMB Circular A–133, has been conducted.

Section 682.401 Basic Program Agreement

Section 682.401(b)(4)

Comment: Many commenters opposed the proposed requirement that borrowers notify the school of any change in employer or employer's address. The commenters indicated that borrowers are unlikely to report this information to their schools and that although this information is useful to lenders if a borrower becomes delinquent, it is not useful to schools. The commenters recommended that the requirement be deleted or modified to require that borrowers notify lenders of those changes. Other commenters recommended that the borrower be required to notify the current holder of the loan of these changes rather than the lender; this was based on the likelihood that the loan would be sold.

Discussion: The Secretary agrees that it is unusual for a school to know when a borrower changes employers and that the information should be reported to the lender to assist the lender in collecting the loan if the borrower becomes delinquent. The Secretary also agrees that changes of student status or employer should be reported to the current holder of the loan to ensure that the information is provided to the party to which it will prove most useful. The Secretary believes that Congress also contemplated that this information would be most useful to the lender when it required in section 485(b) of the Act that information collected from the borrower during the exit interview regarding the borrower's expected future employment be forwarded to the holder of the borrower's loan.

Changes: The Secretary has amended the regulations to require a borrower to notify the current holder of any change of name, address, student status to less than half-time, employer, or employer's address.

Section 682.401(b)(8)

Comment: Some commenters requested that the Secretary clarify whether any service or fee restrictions can be imposed on students (or parents borrowing on behalf of those students) who are not residents of the State served by a guaranty agency but who are attending school in that State. The commenters questioned whether a variable fee structure for out-of-state borrowers would be prohibited by this provision.

Discussion: A guaranty agency is prohibited from imposing any additional restrictions on out-of-state students who are attending a school in a State served by the guaranty agency. A fee structure that discriminates against out-of-state borrowers attending an in-state school would violate the non-discrimination provisions in section 428(b)(1)(S) of the Act. However, a variable fee structure imposed by the agency on both in-state and out-of-state students would not be considered such a restriction.

Changes: None.

Section 682.401(b)(9)

Comment: One commenter suggested deleting the phrase "excluding interest or other charges the lender may have added to the principal balance" from § 682.401(b)(9)(iv), which describes how much the guaranty agency may charge as an insurance premium.

Discussion: Because the insurance premium is deducted from the proceeds of a loan when it is made, it is not possible for interest or other charges to have been added to the loan before the insurance premium is deducted.

Changes: The regulations have been revised to remove the phrase regarding interest and other charges from the description of how much a guaranty agency can charge for an insurance premium.

Comment: A number of commenters objected to requirements in § 682.401(b)(9) and § 682.406(a)(1) that, if funds are disbursed by means of electronic funds transfer and the funds are not released within 120 days from the school's restricted account, the insurance premium must be refunded and the loan loses reinsurance. The commenters stated that a lender would have no way of knowing if or when the funds were released from the restricted account.

Discussion: If loan proceeds are disbursed by means of electronic funds transfer, the lender must have a system in place to determine that the funds were released from the school's restricted account within 120 days of disbursement. The system developed to monitor and document that the funds have been released is a matter between the lender and the school. If these funds are released after the 120th day, the loan loses reinsurance, and the origination fee and any insurance premium assessed against the borrower must be refunded.

Changes: None.

Section 682.401(b)(12)

Comment: Some commenters asked the Secretary to clarify that if a guaranty agency charges its lenders a fee to refinance fixed-rate PLUS and SLS loans, the agency must not charge different fees to different lenders. Other commenters asked how this fee may be assessed, *i.e.*, is it to be a flat dollar fee or may a percentage of the refinanced amount be used?

Discussion: Guaranty agencies are permitted to charge lenders a fee for refinancing fixed-rate PLUS and SLS loans. See § 682.401(b)(12). If an agency charges a fee, it must charge that fee consistently to all lenders who refinance

fixed-rate PLUS and SLS loans. A guaranty agency may not discriminate against participating lenders. See section 428(b)(1)(u) of the Act. This fee may be either a flat dollar amount or a percentage of the fee charged to the borrower.

Changes: The regulations have been amended to clarify that if an agency charges a fee, it must charge that fee to all lenders.

Section 682.401(b)(18)

Comment: Some commenters questioned what lenders and guaranty agencies would be permitted to do with information learned through a student status confirmation report. Other commenters questioned what procedures should be followed if information on a student status confirmation report conflicts with information held by the lender or guaranty agency.

Discussion: A holder of a FFEL program loan is required to act on any information received from the student status confirmation report. As noted in Section III of Dear Guaranty Agency Director Letter 88–G–138, "A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has."

Changes: None.

Comment: A number of commenters suggested that rather than requiring guaranty agencies to use the report format specified in appendix B for the student status confirmation report, the Secretary should specify only the data elements that must be included and let the format be developed by guaranty agencies and other program participants. Many commenters wholeheartedly supported the establishment of a uniform system for monitoring student enrollment status.

Discussion: In the "Comments and Responses" to the final FFEL regulations published on November 10, 1986, the Secretary noted his concern "with the administrative burden that might be imposed on schools if each agency adopts a different monitoring system." See 51 FR 40941. No uniform system for monitoring student-enrollment status has been established voluntarily in the intervening years. Therefore, the Secretary, in response to continuing requests from schools to establish such a system, is mandating that guaranty agencies use the form specified in appendix B of these regulations, unless the Secretary notifies the guaranty agency that other data elements or a revised format may be used.

Changes: The regulations have been revised to require the guaranty agency to use appendix B, unless notified by the Secretary that other data elements or a revised format may be used. The Secretary has also revised appendix B to provide definitions that apply to the data elements.

Section 682.401(d)(1)

Comment: Many commenters asked the Secretary to include a provision in the regulations that requires the school or a Multiple Data Entry (MDE) service to provide, without cost, the items on the common financial aid form that could not be included in the loan application.

Discussion: The Secretary does not believe a regulatory change is necessary and will ensure that a guaranty agency has access without cost to the data that is needed by the guaranty agency but that may not be included on the loan application.

Changes: None.

Section 682.401(e)

Comment: A number of commenters asked that Dear Colleague Letter 89–G–157, which dealt with inducements by lenders and guaranty agencies, be incorporated into the regulations.

Discussion: Dear Colleague Letter 89–G–157, issued in February 1989, described a number of scenarios that the Secretary would consider improper inducements and a number of scenarios that he would not consider to be inducements. Nothing in these regulations invalidates that guidance. The Secretary declines, however, to incorporate the contents of the letter into the regulations.

Changes: None.

Section 682.402 Death, Disability and Bankruptcy Payments

Section 682.402(a)(3)

Comment: Many commenters suggested that the Secretary should reinsure a death, disability, or bankruptcy claim even if the loan would not qualify for payment as a default claim. They suggested the lender's activity or inactivity has no relation to the borrower's present condition.

Discussion: The Secretary agrees that the lender's actions had no bearing on the condition that would otherwise qualify the borrower for cancellation. The same cannot be said about the effect of the lender's failure to service the loan properly on the repayment status of the loan before the cancellation. Therefore, the Secretary continues to believe that a claim that is not otherwise eligible for a default claim before cancellation should not be paid simply as a result of an unrelated condition of the borrower.

Changes: None.

Section 682.402(b)(3)

Comment: Several commenters requested that the Secretary increase the period for suspension of collection activities pending receipt of documentation verifying a borrower's death to 60 days from the proposed 30 days. They argued that the proposed rule provided lenders with insufficient time to secure the required documentation and placed them in the position of having to resume collection activities with the borrower's bereaved family.

Discussion: The Secretary understands the commenters' reluctance to resume collection activities under these circumstances. However, the Secretary believes that 30 days is a sufficient period to secure documentation of a borrower's death in light of the fact that, in addition to a death certificate, a lender may accept "other proof of death that is acceptable under applicable State law" or, if that is not available, "other evidence" that the guaranty agency believes establishes that the borrower has died. The Secretary believes that in many States the borrower's obituary notice is sufficient to document the borrower's death. "Other evidence" may also include, but is not limited to, a published account of a borrower's death in a newspaper or other published report or a letter from a member of the clergy or funeral home director in a position to verify the death.

Changes: None.

Section 682.402(d)(2)

Comment: Several commenters requested that the Secretary revise § 682.402(d)(2) to provide that if a lender receives notification of a borrower's bankruptcy filing in the form of a written notice from the borrower's attorney, the notice must specify the name and address of the court in which the bankruptcy petition was filed and the case number. The commenters believe this additional information is necessary because written notices sometimes reflect a borrower's intention to file rather than an actual filing.

Discussion: The Secretary understands that written notices can sometimes be misleading. However, he believes that being overly prescriptive in detailing the contents of the written notice will result in a lack of lender response to notices that do not contain exactly the information prescribed in

the regulations. The Secretary expects the lender to follow up with the attorney or the borrower if it receives a written notice that does not include all the information necessary to conclude that a bankruptcy petition has been filed.

Changes: None.

Section 682.402(d)(4)

Comment: A number of commenters noted that there was no mention in the regulations as to what procedures a lender should follow if it receives notice that a bankruptcy court has converted a "no asset" case to an "asset" case. The commenters suggested that the lender should be required to file a proof of claim with the bankruptcy court within 30 days after receiving such a notice from the court.

Discussion: The Secretary agrees with the commenters. It is not uncommon for a bankruptcy court to decide that the borrower does have assets even though the original bankruptcy petition stated that no assets were available.

Changes: The Secretary has added a provision to the regulation to require a lender to file a proof of claim with the bankruptcy court within 30 days after receiving notice that a "no asset" case has been converted to an "asset" case.

Section 682.402(d)(5)

Comment: Several commenters requested that the Secretary clarify that, in the case of a Consolidation loan, the seven-year period in which a Title IV student loan cannot be discharged in bankruptcy begins when the Consolidation loan enters repayment rather than when the loans that were consolidated entered repayment.

Discussion: Section 682.402(d)(5) of the regulations, which addresses the circumstances under which a lender must file a bankruptcy claim with the guaranty agency, specifies that "the loan has been in repayment for more than seven years * * * from the due date of the first payment until the date of the filing of the petition for relief * * *." The Secretary notes that "the loan" as used in the regulations includes a Consolidation loan and that the seven-year period of nondischargeability commences from the due date of the first payment on the Consolidation loan rather than from the due date of the first payment on the underlying loans paid off by the Consolidation loan.

Changes: None.

Comment: A number of commenters felt the language in the regulations requiring a lender to file a bankruptcy claim if the borrower "has begun an action" to have the loan discharged was unnecessarily vague. The commenters believed that the language concerning the lender learning of a bankruptcy action should refer to the lender receiving a "summons and complaint" to determine dischargeability based on undue hardship.

Discussion: The term "summons and complaint" is the correct technical term for what the lender should receive if the dischargeability of a loan is going to be addressed to a bankruptcy court. However, the Secretary also recognizes that a lender might learn of a bankruptcy petition or action filed by the borrower through other means. The general language of the regulations requires the lender to take action to protect the loan from being discharged on the basis of information that might not necessarily come as a formal "summons and complaint" from the bankruptcy court.

Changes: None.

Section 682.402(d)(5)(ii)

Comment: Several commenters requested that the regulations be revised to allow a lender, after a bankruptcy proceeding has been completed or dismissed, to treat the loan as having been in forbearance from the date of the borrower's delinquency preceding the filing of the bankruptcy petition rather than from the date of the borrower's filing of the petition as proposed. The commenters believe that this will improve the lender's chances of averting a default by a borrower who might have been severely delinquent prior to filing a bankruptcy petition and who will continue to have difficulty making payments on a FFEL loan after the stay on collections is lifted.

Discussion: The Secretary understands the commenter's concerns and agrees that lenders should have greater flexibility in assisting borrowers in these circumstances to avoid default. However, the Secretary has decided to provide for this treatment by revising § 682.211 of the regulations rather than making a change to § 682.402.

Changes: None.

Section 682.402(e)(2)(ii)

Comments: Several commenters recommended revisions to the filing deadlines for a lender to file a bankruptcy claim with the guaranty agency. One commenter stated that the deadline for submission of a bankruptcy claim should never be less than 30 days and recommended that the Secretary allow a guaranty agency to provide a longer filing period if it believes this will not in any way hamper its ability to oppose the discharge of the loan. The commenter indicated that he knew of no instance where a 30-day period prevented an agency from opposing a discharge. Other commenters objected to the 10 (calendar) day standard included in § 682.402(e)(2)(ii)(C) because they believe this is an insufficient period for claim filing. These commenters recommended that the provision be revised to 10 business days or 15 days.

Discussion: The Secretary believes that bankruptcy claims must be handled as expeditiously as possible to provide guaranty agencies with sufficient time to successfully oppose the discharge of the loan. The Secretary does not agree that 30 days is always sufficient time. The Secretary also believes that, given the increased number of bankruptcy filings nationwide, standard filing deadlines are important. Therefore, the Secretary declines to allow a guaranty agency to establish its own filing deadlines. The Secretary agrees that 10 calendar days might be insufficient time for claim filing if it includes a holiday period. Therefore, the regulations have been revised to provide 15 days.

Changes: Section 682.402(e)(2)(ii)(B) has been revised to provide the lender with 15 days to file a claim with the guaranty agency after the lender is served with a complaint or motion to have a loan determined to be dischargeable on the grounds of undue hardship.

Section 682.402(h)(5)

Comment: Several commenters objected to the proposed requirement that a lender repurchase a loan if a judgment is entered that the loan is non-dischargeable in bankruptcy or a discharge is denied to the borrower on any ground. The commenters stated that it is possible that the lender required to repurchase the claim might no longer participate in the FFEL program and that these repurchases will result in borrower confusion. They also stated that a borrower who has filed a bankruptcy petition is unlikely to be able to repay the loan and is likely to default on the loan. Therefore, they recommended that the borrower be required to make payments to the guaranty agency sufficient for the borrower to rehabilitate the loan.

Discussion: The Secretary believes that a loan subject to repurchase under these provisions should be handled like all other loans subject to pre-default collection and that the lender is the party best equipped to deal with these loans. If the guaranty agency should find that a lender that would be expected to repurchase a loan has withdrawn from the program, the Secretary would expect the agency to arrange a repurchase by another eligible

lender in its program. The Secretary also believes, contrary to the commenter's view, that a borrower who has filed a bankruptcy petition and has discharged other debts might be in a better position to repay his or her FFEL loan than prior to the bankruptcy filing. Finally, the Secretary is requiring the repurchase of loans that were not in default at the time the bankruptcy petition was filed. Loans that were in default prior to the borrower's filing of the bankruptcy petition would remain with the guaranty agency and loan rehabilitation and repurchase would be an option available to the borrower.

Changes: None.

Section 682.402(i)

Comment: Many commenters strongly supported the proposed change in the treatment of chapter 13 bankruptcy claims that provides that the Secretary would reimburse the guaranty agency for its losses after it pays those claims to lenders. Several commenters requested that the Secretary clarify that this treatment would apply to chapter 13 bankruptcy claims paid to lenders prior to the date these regulations become effective and held currently by the guaranty agency.

Discussion: The Secretary agrees that it is necessary to clarify that the provisions contained in § 682.402(i) apply to chapter 13 claims paid to lenders prior to the date these regulations become effective and held currently by the guaranty agencies, in addition to any claims paid subsequent to the date the regulations become effective. However, the Secretary does not believe a revision to the regulations is necessary.

Changes: None.

Section 682.404 Federal Reinsurance Agreement

Section 682.404(a)(2)

Comment: Some commenters objected to the definition of preclaims assistance as at least three collection activities by the guaranty agency. If preclaims assistance is available only at the 90th day of delinquency, the commenters believe that there will not be enough time for the agency to comply with the statutory requirement that supplemental preclaims assistance be performed.

Discussion: While there is a requirement that supplemental preclaims assistance be performed on or after the 120th day of delinquency, there is no similar requirement regarding the timing of preclaims assistance. If a guaranty agency offering preclaims assistance only at the 90th day of delinquency feels that it is incapable of performing three collection activities in 30 days before beginning supplemental preclaims assistance at day 120, it should consider making preclaims assistance available to its lenders earlier (e.g., at the 60th day of delinquency).

Changes: None.

Section 682.404(g)(2)

Comment: A number of commenters stated that the Secretary's equitable share of payments received on defaulted loans should not apply to collection costs guaranty agencies charge on those loans. These commenters believe that section 428(c)(2)(D) of the Act limits the Secretary's equitable share only to payments made to reduce outstanding principal and interest owed by the borrower. The commenters also believe that since the Secretary does not provide reinsurance for collection costs it is inappropriate to deduct the Secretary's equitable share from these costs.

Discussion: Section 428(c)(2)(D) of the Act specifies that an agreement between the Secretary and a guaranty agency "shall provide that if * * * any payments are made in discharge of the obligation incurred by the borrower * * * (including any payment of interest accruing on such loan * * *), there shall be paid over to the Secretary * * * (a) proportion of the amounts of such payments * * *" Thus, this provision clearly states that a portion of all payments made by a borrower on a defaulted loan held by a guaranty agency goes to the Secretary. The debtor's obligation includes principal, interest, and collection costs under section 484A(b)(1) of the Act. An agency receives reimbursement for its cost of collecting a defaulted loan through the portion of the collected amounts it is allowed to keep. By assessing and collecting these costs (even though it may only keep a portion of the collection), an agency receives more than if it had never assessed collection costs.

Changes: None.

Section 682.404(g)(3)

Comment: A number of commenters objected to the proposal that the Secretary's equitable share of payments made on defaulted loans be forwarded to the Secretary within 30 days of receipt of those payments because this would conflict with the contracts many guaranty agencies have with their collection contractors. The commenters also argued that it would be difficult to reflect end-of-the-month collections on the monthly reports to the Secretary.

Discussion: Many guaranty agencies use outside collection contractors. In fact, the alternative collection procedure for defaulted loans in § 682.410(b) requires an agency to use outside collection contractors if the guaranty agency's own efforts to bring the borrower into repayment are unsuccessful. The Secretary recognizes that as payments to the Department are made once a month, it would be unlikely that a payment made at the end of the month would be included in that month's payment to the Secretary.

Changes: The regulations have been amended to allow guaranty agencies 45 days from receipt of payments made on defaulted loans to send the Secretary's equitable share of those payments to the Secretary.

Section 682.406 Conditions of Reinsurance Coverage

Section 682.406(a)(2)

Comment: Many commenters opposed the proposal that the lender provide a payment history and a collection history to the guaranty agency with a default claim. Several commenters believe that the collection history should be required only on the most recent 180 days before the borrower defaulted on the loan.

Discussion: One of the greatest areas of dispute with borrowers is how loan payments have been applied. Without a payment history in the file, it is impossible for the guaranty agency to determine if payments have been applied properly. If a loan is transferred to another servicing system, a print-out of the payment history should be maintained in the borrower's file to meet this requirement. While it is true that in reviewing the due diligence performed on a loan the Secretary is concerned with the 180-day delinquency period that preceded the default, an examination of the activity that occurred on the account before it became delinquent is equally important. A report on this activity is used to verify the repayment status of the borrower at the beginning of the delinquency period.

Changes: None.

Section 682.406(a)(5)

Comment: Many commenters objected to the proposal that would require, as a condition of reinsurance, that a claim returned to the lender due to inadequate documentation be resubmitted to the guaranty agency within 30 days. Many commenters felt that 60 or 90 days should be permitted, while other commenters stated that lenders should be allowed a "reasonable" time to resubmit such a claim. One commenter stated that an interest limitation on

resubmitted claims would better ensure that returned claims are resubmitted in a timely manner rather than having resubmission of the claim required within a given number of days as a condition of reinsurance.

Discussion: The Secretary is concerned that loans eligible for default claim payments be processed quickly to allow the guaranty agency to begin its collection efforts against the borrower at the earliest possible time. The Secretary also is concerned that a lender not file a claim it knows is incomplete and will be rejected solely to avoid missing the timely filing deadline or to extend the period for which the lender may receive interest and special allowance payments. The Secretary also recognizes that there are occasions when a claim submitted to the guaranty agency does not initially satisfy the requirements for claim payment but can do so with additional documentation or explanation.

Changes: The Secretary has changed the regulations to provide that a lender may receive full reimbursement for outstanding principal, accrued interest, and special allowance if an otherwise eligible claim that has been returned solely because of inadequate documentation is resubmitted within 30 days after the date the agency returned the claim. If the lender resubmits the claim by the 60th day after the claim was returned by the guaranty agency, principal is reinsured but interest payments will be limited to the 30th day after the claim is returned. The timely filing violation on otherwise eligible claims not resubmitted by the 60th day after being returned by the guaranty agency must be cured using the procedures set forth in Bulletin 88–G–139 (appendix D).

Section 682.406(a)(7)

Comment: Many commenters strenuously opposed the proposed requirement that a guaranty agency pay or return a default claim to a lender within 45 days of the date the lender filed the claim in order for interest accruing beyond the 45th day to be reinsured. The commenters felt that the increased administrative burden to review claims quickly would outweigh any costs realized by the reduction in time allowed guaranty agencies to pay or return claims. Many commenters believed that 45 days would not provide sufficient time for a guaranty agency to adequately review a claim. Other commenters noted that some guaranty agencies begin collection activity when a claim is submitted and that it was not uncommon for this collection activity to be instrumental in causing the borrower to reduce the delinquency status sufficient to bring the loan out of default. Many commenters suggested that the proposed rule might actually increase defaults because a borrower would no longer have the benefit of this additional collection activity.

Discussion: The Secretary believes that it is necessary for the default claim to be reviewed and paid promptly to reduce the amount of the default claim and to allow the guaranty agency to begin collection activity against the defaulted borrower. If an agency is able to bring a borrower into repayment so quickly after the lender has failed to collect on the loan, the Secretary believes it calls into question the lender's collection efforts. However, the Secretary recognizes that in some circumstances (e.g., an unusually large volume of default claims), it might be difficult for a guaranty agency to adequately review a claim within 45 days and, therefore, he has extended to 60 days the deadline by which a guaranty agency must pay a default claim to receive reinsurance on all otherwise eligible accrued interest. The Secretary wishes to clarify that if a claim is paid after the 60th day, and the guaranty agency's agreement with the lender covers accrued interest, the guaranty agency is required to pay the interest accruing after the 60th day to the lender even though this interest is not eligible for reinsurance. In consideration of commenters' concerns regarding the change in procedures required by this provision, the Secretary is delaying the date this requirement becomes effective.

Changes: The Secretary has extended to 60 days the deadline by which a guaranty agency must pay a default claim to receive reinsurance on all otherwise eligible accrued interest.

Section 682.406(a)(9)

Comment: Some commenters objected to the proposal establishing, as a condition of reinsurance, the requirement that a loan be legally enforceable when the agency pays the claim. The commenters argued that a number of events relevant to the enforceability of the loan may have occurred without the guaranty agency's or lender's knowledge.

Discussion: The Secretary notes that it has always been the Department's policy that a loan be legally enforceable if it is to be insured or reinsured by the Secretary. This provision, which is now contained in § 682.406(a)(10), is not new and merely codifies within the regulations a long-standing policy that has been part of the FISL and the FFEL programs since their inception.

Discussion: A guaranty agency may use the assets of its reserve fund only as permitted by § 682.410(a). Paragraph (a)(3) of that section permits a guaranty agency to use a specific portion of its reserve funds "* * * only for payments necessary to perform functions directly related to the guaranty agency's agreement with the Secretary and for proper administration of the guaranty agency's FFEL loan guarantee activities." The costs of operating a loan servicer for loans that have not yet defaulted clearly are unrelated to the expenses incurred by a guaranty agency in providing loan guarantees to lenders and are, therefore, not permissible.

This policy applied to all agencies as of December 26, 1986, the date the final regulations published by the Department on November 10, 1986 went into effect. The Secretary believes that the use of any reserve funds for for-profit enterprises is not permitted because of the risk to funds dedicated to the FFEL program.

Changes: None.

Section 682.410(a)(3)

Comment: Several commenters objected to the proposed restrictions on the use of borrower payments by guaranty agencies contained in § 682.410(a)(3)(iv). The commenters believed that these restrictions conflict with section 428(c)(6) of the Act, which allows guaranty agencies to use the percentage it retains of borrower payments "for costs related to the student loan insurance program, including the administrative costs of collection * * *"

Discussion: The Secretary agrees with the commenters that the proposed restrictions represent a narrow interpretation of the intent of the statute and that agencies should be allowed to use borrower payments for activities supporting the proper administration of the guaranty agency's loan guarantee activities.

Changes: Section 682.410(a)(3)(iv) has been deleted and "amounts collected on FFEL loans" has been added to the other items specified in § 682.410(a)(3)(i) that can be used to support the agency's administration of its loan guarantee activities.

Section 682.410(b)(2)

Comment: Many commenters objected to the requirement that a guaranty agency must assess collection charges against the borrower. Other commenters stated that if collection charges had to be assessed, a flat rate should be used by each guaranty agency.

Discussion: The statute clearly specifies that, notwithstanding any

provision of State law to the contrary, collection charges must be assessed against the borrower. See section 484A(b) of the Act. The formula referenced in § 682.410(b)(2) specifies that the amount charged will be the lesser of the costs of collection under the formula in 34 CFR 30.60, or the amount the borrower would be charged if the loan was held by the Department. This amount will be a percentage of the principal and interest outstanding, may be calculated annually, and would be a flat rate assessed against all borrowers with defaulted loans held by that agency.

Changes: None.

Section 682.410(b)(4)

Comment: Some commenters questioned what charges a guaranty agency may capitalize after a default claim has been paid.

Discussion: A guaranty agency is required to capitalize any interest owed on the loan by the borrower. This may include interest that was not paid to the lender by the guaranty agency and interest paid by the guaranty agency that will not be reimbursed by the Secretary.

Changes: This provision of the regulations has been amended to clarify that all interest, rather than "unpaid charges" owed by the borrower, must be capitalized by the guaranty agency.

Section 682.410(b)(5)

Comment: Many commenters vigorously opposed the provision that requires a guaranty agency to grant a borrower an opportunity for an administrative review of the legal enforceability or past-due status of the loan obligation before reporting the default to a credit bureau or assessing collection costs against the borrower. The commenters stated that a defaulted borrower had already had ample opportunity throughout the repayment period to protest the debt and that the administrative review would result in a substantial administrative burden for an agency and would delay any recovery of the debt. In addition, the commenters felt that section 430A of the Act set the parameters of credit bureau reporting for the FFEL programs and that an opportunity for an administrative review was inconsistent with congressional intent.

Discussion: Federal law requires notice and opportunity to contest a debt before a default is reported to a credit bureau. See 31 U.S.C. 3711(f). Moreover, in light of the serious consequences of credit bureau reporting for a borrower, the Secretary believes it reasonable and appropriate for a borrower to have an opportunity to contest the default. The Secretary believes that a guaranty agency should not have difficulty implementing this requirement as it already provides an opportunity for review when it assigns a loan to the Secretary for participation in the Internal Revenue Service (IRS) offset process. The statute authorizing Federal agencies to collect debts by administrative offset also requires the agency to provide a debtor with notice of a proposed IRS offset and at least 60 days in which to present evidence regarding the debt. See 31 U.S.C. 3720A. In the FFEL program, the Secretary provides this opportunity to a debtor by a review and an initial determination by the guaranty agency that held the debtor's loan and maintains records of that loan account. At this time, virtually all guaranty agencies participate in the IRS offset procedures. When a guaranty agency submits loans to the Department for collection through IRS tax-offset, it certifies that the affected borrowers have been granted an opportunity for an administrative review. Both 31 U.S.C. 3711(f) and 31 U.S.C. 3720A require a 60-day notice period and an opportunity for an administrative review of the debt. The administrative review procedures outlined in the regulations meet the credit bureau reporting requirements and the requirements for participation in the IRS offset process. Once the opportunity for an administrative review has been offered to the borrower, the guaranty agency is not required to offer it again. The Secretary expects the volume of requests for administrative reviews received by a guaranty agency to be manageable.

Changes: The Secretary has retained the requirement that borrowers be given an opportunity for an administrative review before a guaranty agency reports the debt to a credit bureau. However, to reduce both the administrative burden for agencies and possible confusion for borrowers, the Secretary has modified § 682.410(b)(6) to provide that the initial notices sent to borrowers in the administrative review process shall also serve as the initial collection activities for purposes of collecting the loan under § 682.410(b)(6).

Section 682.410(b)(7)

Comment: Some commenters objected to the proposed requirement in the alternative due diligence collection procedures for guaranty agencies that a guaranty agency refer all loans to one or more collection contractors if its collection efforts are unsuccessful. The commenters believe the agency should be allowed to retain some loans to compete with the collection contractors.

Discussion: A major underlying premise of the proposed alternative due diligence collection procedures is that a guaranty agency will do everything possible within the 180 days during which it attempts to collect to bring the borrower into repayment. If the borrower does not begin repayment, the amount the agency is allowed to retain after paying the Secretary's equitable share and the contingency fee to the collection contractor is much smaller than the amount it would retain if it brought the borrower into repayment through its own efforts. The Secretary believes that there would be little incentive for the guaranty agency to vigorously pursue repayment within the allotted 180-day period if the guaranty agency were allowed to continue to collect on loans after that period.

Changes: None.

Section 682.410(c)(11)

Comment: Many commenters opposed the provision that would require a guaranty agency to provide training and technical assistance or to act as an escrow agent for a school that is experiencing financial difficulty. These commenters felt that a guaranty agency should not "prop-up" a school that is experiencing financial difficulty.

Discussion: The Secretary agrees that it is not always in the best interest of the FFEL program to prolong the existence of schools that are in financial difficulty.

Changes: The Secretary has amended the regulations to require a guaranty agency to provide training and technical assistance, if appropriate, to a school or holder experiencing financial problems and has deleted the provision that would have required a guaranty agency to act as an escrow agent.

Section 682.411 Due Diligence by Lenders in the Collection of Guaranty Agency Loans

Comment: The Department received many comments regarding the due diligence requirements for lenders collecting loans guaranteed by a guaranty agency. Virtually all the commenters commended the Department's willingness to be more accommodating to lenders' concerns and to reduce the opportunity for a loan to lose reinsurance because of incidental violations of the due diligence collection requirements. While some commenters approved of the proposed procedures with minor modifications, others felt that a complete reworking of the procedures focusing on performance-based standards related to the lender's default rate or compliance with a given standard would better

achieve the goals of reducing default and minimizing the lender's risk of losing reinsurance on a loan. A number of other commenters felt that retaining the standards set forth in the Department's current regulations and cure procedures would be preferable to adopting another standard. Other commenters felt the previous standards should be maintained but that the cure procedures for loans that have lost reinsurance should be relaxed.

Discussion: The Secretary is sympathetic to the commenters' concerns that a lender should not face an undue risk of loss of reinsurance because of technical violations of a collection standard. However, the Secretary is also convinced that the level and intensity of effort expended in the collection of a student loan relates directly to the likelihood of its default. One commenter, in supporting the Secretary's development of performance-based collection standards, noted that stringent standards are necessary for some lenders but are inappropriate for others because of the care and diligence with which those lenders exercise their fiduciary obligations. The Secretary believes that, while performance standards for lenders might be attractive, establishing an acceptable standard of performance is not possible because the make-up of lenders' portfolios differs greatly, e.g., by type of school and region of the country, etc. Compliance with a given performance standard also presents difficulties because an audit using a statistically valid sample of a lender's entire student loan portfolio, not just claims submitted, would have to be used to determine an acceptable level of compliance. Changes that occur subsequent to the audit that affect compliance, e.g., loan volume, personnel or computer changes, etc., could not be accounted for or even anticipated by the audit. Finally, given the serious and detrimental effect of a defaulted loan to the borrower, the Secretary is strongly opposed to the idea that a default claim could be paid by a guaranty agency without a review by the agency to ensure that the borrower was given the opportunity to respond to a diligent collection effort on the loan. Establishing different standards for different lenders would make that review extremely difficult and time-consuming. The commenters who generally supported the proposed § 682.411 felt that some modifications would be necessary for lenders to be able to continue to use the collection systems designed to meet the standards in the current FFEL program regulations. It has always been the Secretary's intent that lenders and servicers that made substantial investments in systems to meet the existing collection requirements should be able to meet the new requirements without making substantial modifications to their systems.

The cure procedures that were issued in March 1988 and published as appendix D of the NPRM will not be relaxed. They were developed after extensive discussion and consultation with representatives of the lender and guaranty agency community and the Secretary continues to believe that they adequately address good-faith violations of the regulatory requirements.

Changes: After carefully reviewing the comments received on § 682.411 and meeting with various representatives of the industry, the Secretary has decided to adopt, with some modifications, the standards proposed in the NPRM. The Secretary has amended the regulations so that no required collection activity during a borrower's delinquency is contingent upon the timing, success, or failure of another collection activity. In addition, the Secretary has changed the due diligence requirements to ensure telephone collection efforts will be used throughout the delinquency cycle, rather than only at the beginning or end, as the Secretary believes that telephone collection activity is most effective if used at regular intervals throughout the delinquency.

Section 682.411(a)

Comment: Many commenters indicated that the language in the NPRM concerning the due diligence requirements for endorsers was unclear. Other commenters opposed the Secretary's proposal to regulate due diligence for endorsers and felt it only would discourage the use of endorsers. Other commenters noted that some State laws prohibit collection efforts against an endorser until after default. Many commenters were also concerned about the consequences of failing to complete the collection activities required of endorsers.

Discussion: The Secretary believes that the use of endorsers can be an effective means of reducing defaults. However, the value of having an endorser on a loan is eliminated if the endorser is not subject to collection activity when the loan becomes delinquent. The Secretary believes that the collection activities undertaken for an endorser should differ from those applied to the borrower and generally should not begin until the borrower is significantly delinquent. Any State law that normally would prohibit collection activity against an endorser from occurring before default occurs is preempted by § 682.411(n).

Changes: Section 682.411(m) has been added to the regulations to clarify that an endorser on a loan must receive at least two collection letters in addition to a final demand letter and at least one diligent effort for telephone contact. If during the delinquency cycle, but prior to the sending of the final demand letter, the lender receives information indicating it does not know the address of the endorser, the lender must attempt to locate the endorser through the use of normal skip-tracing techniques, which must include at least an inquiry to directory assistance. In addition, § 682.406(a)(3) has been revised to state explicitly that due diligence against an endorser is a condition of reinsurance. If a lender fails to perform all, or any portion of, the required due diligence with an endorser, the loan will not be eligible for reinsurance until the missing activities have been performed. The lender may perform the collection activities late, but the timely-filing deadlines and associated penalties still apply. Missed due diligence activities with an endorser will not be counted as violations but must be performed.

Comment: Several commenters noted that the term "outside the United States" would exclude telephone efforts against borrowers residing in Puerto Rico, Canada, and Mexico who are easily accessible by telephone.

Discussion: The Secretary agrees with the commenters that diligent telephone efforts to contact borrowers residing in these areas should not be excluded.

Changes: The regulations have been revised to provide that the lender must make telephone calls to borrowers who reside in a State (as that term is defined in § 668.2), Canada, and Mexico.

Section 682.411(b)

Comment: A number of commenters were concerned about how violations would be counted if the first payment due date was not established in a timely manner.

Discussion: Section II of appendix D discusses the requirements for establishment of the first payment due date. The deadlines and penalties outlined in that discussion are based on the current regulations under which a violation could not occur until the 31st day of delinquency. The penalties increase depending upon how late the first payment due date is established. Under the new standards contained in § 682.411, a violation occurs if the first payment due date does not occur by the deadline contained in § 682.411(b). The Secretary has decided that in

determining the penalties to be associated with the failure to establish a first payment due date on a timely basis, the Secretary will look at the period between when the first payment due date should have been established according to § 682.411(b) and the date of the actual first payment due date. If this period is more than 45 days, reinsurance is lost, any special allowance received for the period that begins 31 days after the date the first payment due date should have been established according to § 682.411(b) must be returned, and the lender must receive a full payment or signed repayment agreement in order for reinsurance to be reinstated. If this period is more than 35 days, but not more than 45 days, a single violation will be assessed against the lender.

Changes: None.

Comment: Several commenters opposed the inclusion of the phrase "more than half of which" payment is later made. The commenters believed that this wording would require a major change to the collection systems of many lenders. They believed that lenders should not be required to count one half of a payment as advancing the due date and curing delinquency for that month. Many commenters believed that the language should be revised to allow a guaranty agency to determine a reasonable payment-shortfall tolerance if a full payment is not received before the date the lender must consider the borrower delinquent.

Discussion: The Secretary recognizes that the language as written might create substantial administrative burden associated with half payments. The Secretary agrees that a reasonable payment-shortfall tolerance amount needs to be established under which a lender need not initiate collection activities if the lender's system allows for such a tolerance. The Secretary also believes that such a tolerance must be standardized across the FFEL program and not vary by guaranty agency.

Changes: The regulations have been revised to provide that a payment that is within $5 of the amount required to advance the due date may advance the due date if the lender's procedures allow for that advancement.

Section 682.411(c)

Comment: Many commenters objected to the proposal that the first collection notice be sent by the 10th day of delinquency. Some commenters submitted data showing that many borrowers who do not meet the payment due date make a payment shortly afterward. Commenters believe that sending a delinquency notice to a borrower so soon after the payment due date was missed is counterproductive and will increase costs to the lender without any commensurate benefit to the FFEL programs. Commenters also pointed out that to provide themselves sufficient lead time to comply with this requirement, lenders would have to reprogram their computer systems to generate the late notices no later than the seventh day of delinquency.

Discussion: The Secretary believes that a notice sent very early in a borrower's delinquency impresses upon the borrower the seriousness of the delinquency status and provides greater incentive to the borrower to make a payment to bring the loan current and avoid further delinquency and default. The Secretary does not believe that lenders will incur significantly greater costs by sending the initial collection notice by the 10th day of delinquency rather than at a slightly later date.

Changes: None.

Section 682.411(d)

Comment: A number of commenters objected to the proposed requirement in the NPRM that each collection letter sent to a borrower must include the consequences of default, including the possibility that litigation may be initiated against the borrower by the guaranty agency. The commenters felt that collection letters sent during the delinquency cycle should be progressively more forceful to be most effective.

Discussion: The Secretary agrees that sending an extremely forceful collection letter early in the delinquency cycle may needlessly alienate a borrower who, for any number of reasons, is experiencing a short-term delinquency. The Secretary also agrees that a series of progressively more forceful collection letters is likely to be more effective than a series of identical letters.

Changes: The regulations have been amended to require that only two of the four letters that lenders are required to send to delinquent borrowers outline the consequences of default. Although the timing of these letters is left to the discretion of the lender, the Secretary intends that the two most forceful letters should be sent late in the delinquency cycle, when they are likely to have the greatest effect on the borrower.

Comment: A number of commenters observed that the language in the NPRM required the final demand letter to be sent after the 180th day of delinquency. The commenters felt that the lender should be able to send the final demand letter earlier than the 180th day of delinquency in order to have more time to prepare and file the claim with the guaranty agency.

Discussion: The Secretary agrees with the commenters. The lender is required to wait 30 days after sending the final demand letter before filing a default claim to give the borrower a chance to respond before a claim is filed with the guaranty agency. The Secretary understands that the proposed rule would have left the lender with only a short time period to file a timely claim.

Changes: The regulations have been amended to allow the lender to send the final demand letter on or after the 151st day of delinquency.

Section 682.411(e)

Comment: A number of commenters objected to the provision that would have required a borrower, after the final demand letter had been sent, to avert default only by making payments sufficient to bring the loan current. The commenters felt that lenders should have the option of not filing a default claim if the borrower could make payments sufficient to bring the loan out of default or sign a forbearance agreement to cover all or some portion of the delinquency.

Discussion: The Secretary agrees with the commenters that there might be circumstances where the borrower might be able to reduce the extent of the delinquency, and thus avoid default, but still not be able to repay the loan in full.

Changes: The Secretary has revised the regulations to allow the lender to permit a borrower who is more than 180 days delinquent to avert default by bringing his or her account less than 180 days delinquent. The requirement that the borrower accomplish this by making payments has been deleted.

Section 682.411(g)

Comment: A commenter requested that the Secretary clarify whether skip-tracing may be undertaken on a borrower prior to the skip-tracing of a delinquent borrower required under § 682.411(g) and, if it is undertaken but unsuccessful, whether skip-tracing activities must be repeated when the borrower becomes delinquent. The commenter stated his belief that skip-tracing should be undertaken as soon as the lender receives information indicating the address of the borrower is unknown, even if this takes place in the grace period prior to the borrower entering repayment.

Discussion: The Secretary agrees with the commenter that a lender should have the flexibility to undertake skip-tracing activities as soon as the address of a borrower becomes unknown. Furthermore, he strongly supports this

approach to loan collection. The Secretary believes that a lender should not be required, if the skip-tracing activities are unsuccessful, to repeat those activities later in the borrower's delinquency cycle unless the lender receives a payment or some other communication from the borrower indicating the borrower's address.

Changes: The Secretary has added a new paragraph (g) to § 682.208 specifying that a lender may undertake the skip-tracing activities specified in § 682.411(g) when a borrower is not delinquent if the lender receives information indicating that the borrower's address is unknown.

Comment: Many commenters felt that the skip-tracing requirements were unclear and were particularly concerned about what penalties a lender would incur if some or all of the skip-tracing was not performed.

Discussion: The Secretary believes that skip-tracing should begin soon after the lender learns the borrower's address is unknown and continue until all possible sources of information available to the lender regarding the borrower's address have been exhausted. Once these efforts have been concluded, or the final demand letter has been sent, the Secretary does not believe that there is any point in requiring further activity until the loan is eligible for claim payment.

Changes: The Secretary has revised the regulation so that a lender may be considered to have met the requirement to diligently attempt to locate the borrower if it attempts to contact, by the date of default, each individual and entity identified in the borrower's file and if there is no gap of more than 45 days between attempts to contact those individuals or entities. If the lender does not contact one or more of the individuals or entities identified in the borrower's loan file and the borrower's address remains unknown, a single due diligence violation will have occurred. If the guaranty agency requires that the lender request preclaims assistance in the event the borrower's address becomes unknown, and the lender does not request the preclaims assistance within 10 days of when it receives information indicating it does not know the borrower's current address, another violation will be considered to have occurred. If a lender performs no skip-tracing on a borrower whose address is unknown, up to three violations would be considered to have occurred. However, under the definition of "Gap in collection activity" in § 682.411(i), a gap begins the day after a lender receives information indicating the lender does not know the borrower's current address. A gap is also defined as the period between collection activities. Any attempt to contact an individual or entity in the borrower's loan file is a collection activity. A gap of more than 45 days (60 for a transfer), necessitates a cure via the lender's receipt of a signed repayment obligation or a full payment. See appendix D. If a lender does not contact each individual or entity in the borrower's loan file by the date of default, but no gap of more than 45 days exists, the lender must satisfy the requirements outlined in I.E.1. of appendix D, or receive a full payment, or a new signed repayment agreement for reinsurance to be reinstated.

Section 682.412 Consequences of the Failure of a Borrower or Student to Establish Eligibility

Section 682.412(a)

Comment: Some commenters expressed concern about subjecting borrowers who receive loan proceeds but do not attend classes to the provisions of § 682.412. The commenters recommended that these borrowers be allowed to receive a grace period and begin normal repayment on the loan.

Discussion: Federal student financial assistance is intended to assist students and their parents to meet the costs of postsecondary education. If a student receives a FFEL program loan but does not attend school, that student has no costs of attendance. Therefore, the borrower must repay immediately the funds for which he or she is now ineligible. The Secretary believes that an individual who borrows and does not matriculate should not receive FFEL program benefits such as the grace period or the 10-year repayment period normally provided to student borrowers.

Changes: None.

Comment: Several commenters objected to the subjective evaluation that a lender would be required to make regarding a borrower's intentions under proposed § 682.412. The proposed rules specify that the lender would exercise the provisions of § 682.412 against a borrower if it determined that a borrower's initial eligibility for a FFEL program loan resulted from information that the borrower knew or should have known was incorrect. The commenters stated these such actions should be taken only on the basis of substantiated fact.

Discussion: The Secretary agrees that subjective determinations cannot be made effectively by lenders and that they should only undertake these actions based on information they can substantiate. The Secretary believes these actions should be taken when the lender can substantiate that a borrower, or a student on whose behalf a parent is borrowing, provided false or erroneous information to support his or her eligibility. These situations are to be distinguished from borrower ineligibility resulting from school certification error or lender error in making the loan where the Secretary does not intend the provisions of § 682.412 to apply.

Changes: The regulations have been revised, consistent with the changes made to similar provisions in § 682.208(f) of the regulations, to require a lender to exercise the provisions of § 682.412 when it receives substantiated information supporting the fact that a borrower, or a student on whose behalf a parent is borrowing, provided false or erroneous information upon which his or her eligibility was based or took other actions leading to a borrower's ineligibility. The provisions also apply to borrowers who receive loan proceeds but do not attend classes.

Section 682.414 Records, Reports, and Inspection Requirements for Guaranty Agency Programs

Section 682.414(a)(3)

Comment: Many commenters stated that they believed lenders should be able to keep a copy of a signed repayment obligation or an affidavit of the borrower's debt in lieu of the original application and promissory note.

Discussion: The Secretary continues to feel strongly that any standard of due diligence that lenders are required to exercise should require that the lender maintain a copy of the original documents that are the basis of the debt. While a signed repayment obligation or affidavit may reflect the borrower's affirmation of the debt's existence, the Secretary believes it would be inconsistent with his responsibilities to allow these types of documents to be retained in lieu of the original application and promissory note.

Changes: None.

Section 682.414(c)

Comment: Many commenters questioned the Secretary's authority in § 682.414(c)(2) to prohibit a guaranty agency from requiring the presence of an agency representative during interviews conducted with personnel during a review of the agency. The commenters believe this prohibition denies the agency due process.

Discussion: The Secretary feels that it is imperative that the Department's representatives have complete access to

guaranty agency personnel and records during reviews of the agency's administration of the FFEL programs. The Secretary further believes, and prior experience indicates, that the presence of agency representatives during interviews with personnel or recording the interviews results in less than a candid flow of information among the reviewers and the agency's personnel. The Secretary believes that an agency receives sufficient due process related to findings that might result from a review and that the restriction on attendance at interviews does not deny due process.

Changes: None.

Section 682.502 The Application To Be a Lender

Section 682.502(b)(4)

Comment: In determining whether to enter into an agreement with an applicant to become a participating lender in the Federal GSL programs, one commenter suggested that the Secretary consider the applicant's default track record under the Title IV loan programs.

Discussion: The Secretary believes that § 682.502(b)(4) provides him with sufficient authority to examine a lender's prior default experience to determine whether to enter into an agreement with the lender. This is because it provides that the Secretary will consider "whether the applicant has had prior experience with a similar Federal, State, or private, nonprofit student loan program * * *." The Secretary believes that this allows him to examine all aspects of a lender's previous performance with Title IV and other programs, including the lender's default rates.

Changes: None.

Section 682.505 Insurance Premium

Section 682.505(c)

Comment: One commenter argued that there is no basis for the FISL insurance premium calculation to be any different from the insurance premium calculation required by statute for guaranty agencies.

Discussion: The statute provides for a separate insurance premium calculation for FISL loans. See section 429(c) of the Act.

Changes: None.

Section 682.507 Due Diligence in Collecting a Loan

Section 682.507(a)(1)

Comment: Several commenters stated that § 682.507(a)(1) should allow for the release of endorsers or, if not, the lender should be directed to use the due diligence collection procedures in § 682.411 with cosigners and endorsers. Some commenters argued that the use of endorsers is not allowed in the FISL program and questioned why they are mentioned in the regulations.

Discussion: Section 427(a)(2)(A) of the Act provides, in part, that a loan is insurable by the Secretary if the promissory note or other written agreement is made without security and without endorsement, except endorsement may be required if the borrower is a minor and his or her signature would not create a binding obligation under applicable State law. Clarification regarding the release of endorsers under the FISL program was provided to lenders in Bulletin L-35, dated June 27, 1978. This Bulletin stated that the Secretary would not pay a default claim on a loan made on or after September 30, 1977 that contained an unauthorized endorsement. However, it allowed a lender to release an unauthorized endorser before the loan became delinquent without jeopardizing Federal insurance. The Bulletin stated further that if the borrower was a minor (and could not legally have entered into a contract) at the time the promissory note was executed, the authorized endorser could not be released. Although due diligence steps with respect to authorized endorsers in the FISL program are not specified, the collection activities required for endorsers in § 682.411 are acceptable to the Secretary.

Changes: The Secretary has revised the regulations to reflect that a lender should exercise due diligence in collecting a loan with regard to an authorized endorser.

Comment: Many commenters suggested that the collection procedures for FISL loans should parallel the due diligence collection procedures required of lenders in the guaranty agency program in § 682.411.

Discussion: The Secretary does not believe it is necessary, at this time, to change the FISL due diligence procedures for lenders because loans no longer are being made under the FISL program. However, as there are only minor differences between the requirements of § 682.411 and § 682.507, the Secretary believes lenders should be allowed to use the due diligence procedures in § 682.411 in lieu of the requirements of § 682.507.

Changes: The regulations have been revised to state specifically that a lender may use the due diligence procedures in § 682.411 in lieu of the requirements in § 682.507.

Section 682.508 Assignment of a Loan

Comment: Two commenters suggested that 45 days be inserted in place of the word "promptly" for notifying borrowers of the purchase or assignment of their loans. They believe this will require lenders holding FISLs and FFELs to service them consistently.

Discussion: The Secretary agrees with the commenters that, if possible, consistent servicing of FISL and guaranteed loans is desirable.

Changes: The regulations have been revised to conform to § 682.208(e)(1) and include the 45-day notice requirement suggested by the commenters.

Section 682.513 Factors Affecting Coverage of a Loan Under the Loan Guarantee

Comment: Several commenters recommended that the phrase "* * * or if it would not be payable on a default claim by the Secretary * * *" be removed from § 682.513(b). The commenters argued that a lender should not be at risk for principal on any bankruptcy, death, or disability claim if no action or inaction by the lender affected whether the claim is collectable.

Discussion: The Secretary believes that a due diligence violation affecting the insurability of a loan before the lender's filing of a death, disability, or bankruptcy claim is sufficient grounds to reject payment of a claim. A death, disability, or bankruptcy should not be an assurance to the lender that the claim will be paid. The Secretary believes a lender's assurance for claim payment must be based on its total due diligence performance in making, disbursing, servicing, and collecting the loan.

Changes: None.

Section 682.515 Records, Reports, and Inspection Requirements for Federal GSL Programs Lenders

Section 682.515(a)(3)

Comment: One commenter suggested that this section be modified to allow documents to be retained on optical-disk media.

Discussion: The Secretary agrees with the commenter that other methods for storing and retrieving data should be recognized.

Changes: A change has been made. The Secretary is revising § 682.515(a)(3)(i) to include optical-disk media or other machine readable formats as an optional method for storing and retrieving data. This change has also been made in § 682 414(a)(4)(i).

Section 682.600 Agreement Between an Eligible School and the Secretary for Participation in the FFEL Programs.

Section 682.600(a)(1)

Comment: Several commenters stated that the Secretary should include proprietary institutions and postsecondary vocational institutions in § 682.600(a)(1) because 34 CFR 600.2 defines four types of schools as eligible institutions. The commenters believe that these two regulatory provisions should be consistent to prevent any confusion surrounding the types of institutions that are eligible to participate in the FFEL programs.

Discussion: The Secretary shares the commenters' concern regarding the need to clarify what constitutes an eligible institution. For purposes of the FFEL programs, section 435(a) of the Act and 34 CFR 682.200 specify two types of eligible institutions: institutions of higher education and vocational schools. A school that meets the definition of a vocational school may also meet the definition of proprietary institution or postsecondary vocational institution in 34 CFR 600.2. The school types listed in 34 CFR 600.2 are not mutually exclusive.

Changes: None.

Section 682.600(a)(2)

Comment: One commenter recommended that the Secretary modify proposed § 682.600(a)(2) to permit only the owner or the institution's Chief Executive Officer to sign the written program participation agreement on behalf of the institution. The commenter recommended this because he felt it was the only way to ensure that the institution's most senior management official understood the administrative and fiduciary responsibilities required of a participating school. The commenter did not believe it was in the best interest of the FFEL programs to delegate this responsibility to another authorized official of the school.

Discussion: The Secretary agrees with the commenter that this change is necessary to protect the integrity of the FFEL programs. Further, the program participation agreement form used by the Department allows only for the signature of the Chief Executive Officer of the institution.

Changes: A change has been made. The Secretary has revised the regulations to specify that the Chief Executive Officer of the institution must sign the program participation agreement with the Secretary.

Section 682.601 Rules for a School That Makes or Originates Loans

Section 682.601(a)

Comment: One commenter stated that § 682.601(a)(3) should be modified to stipulate that an eligible school lender may not make loans to more than 25 percent of the undergraduate students at the school.

Discussion: Section 435(d) of the Act specifies that an eligible school lender may make loans to 50 percent of its undergraduate students. The Secretary has no authority to change this statutory provision.

Changes: None.

Comment: A number of commenters recommended that the Secretary retain the paragraph in current regulations that allows the Secretary to consider any evidence that suggests that a school lender may not have provided sufficient counseling to students to seek loans from a commercial lender before the school makes a loan to a student. Any pattern of denial letters or students' sworn statements may reveal that a school lender did not make a good-faith effort to counsel students to obtain loans from a commercial lender.

Discussion: The Secretary agrees with the commenters.

Changes: The paragraph detailing what the Secretary may consider in deciding whether a school has given sufficient counseling to students to seek loans from commercial lenders first has been reinstated.

Section 682.601(b)

Comment: Many commenters stated their objection to the proposed elimination of the requirement that the student have documented evidence that he or she has been denied a loan from a commercial lender before obtaining a loan from a school lender.

Discussion: The Secretary agrees with the commenters that documentation is necessary to implement section 435(d)(2)(D) of the Act. This provision of the Act specifies that, to be an eligible lender of a FFEL loan, a school may not make a loan to an undergraduate student unless the student previously has received a loan from the school or has been denied a loan by an eligible lender.

Changes: A change has been made. The Secretary has revised the regulations to require the student to provide a written statement of denial for a FFEL loan from an eligible commercial lender before applying to the school for a FFEL program loan. Consequently, the written documentation requirement previously contained in § 682.601(c) of the Department's current regulations has been reinstated in these final regulations.

Section 682.601(c)

Comment: One commenter expressed concern that a school might use the factors listed in § 682.601(c) (1), (2), and (3) of the NPRM when requesting a waiver of the 50 percent school lending limit to circumvent the requirements contained in § 682.601(a). The commenter believes that a school should be required to prove that economically disadvantaged students would be better off for having received the training offered by the school when requesting such a waiver. Further, the commenter does not believe "uniqueness" is a valid reason to permit a school to take advantage of a student who may not be a well-informed consumer.

Discussion: The Secretary does not agree. Section 682.601(c) contains some, but not all, of the factors the Secretary uses to evaluate a school's request to waive the 50 percent lending limit because imposing that limit would create substantial hardships for the school's present or prospective students. The Secretary believes that these factors represent reasonable criteria to use in determining whether a waiver will provide access to FFEL program loans to students who otherwise would not have access.

Changes: None.

Section 682.602 Correspondence School Schedule Requirements

Section 682.602(b)

Comment: One commenter objected to the requirement that a correspondence school establish and provide a schedule for lesson submission to a prospective student before the student actually makes a commitment to enroll in a course of study by correspondence. The commenter argued that each schedule is individualized and that the actual lesson due dates for each lesson that makes up the course schedule are contingent upon the student's actual program start date.

Discussion: The Secretary does not agree with the commenter. The Secretary believes that it is essential to provide a prospective student who is considering a program of study by correspondence with a schedule containing sufficient information to help the student make a good decision about undertaking the course of study. The Secretary understands that a course schedule provided before the student enrolls is a tentative schedule that might require later modification. However, the Secretary believes that information

provided to a prospective student on the content of lessons in the program and the sequence of those lessons would greatly assist the student in determining whether a course of study meets his or her individual needs and lifestyle. Finally, the Secretary believes that a prospective student who receives this kind of information is more likely to complete the program successfully.

Changes: None.

Comment: One commenter recommended that the schedule required of correspondence schools also should contain information about the location of any residential training required by the program.

Discussion: The Secretary agrees that the location of residential training is often an important factor in whether a student is able to complete a course of study by correspondence and, therefore, a prospective student should have this information before he or she makes a commitment to a course of study.

Changes: A change has been made. The school is required now to provide the exact location of any required residential training as part of the course schedule given to prospective students.

Section 682.603 Certification by a Participating School in Connection With a Loan Application

Comment: Several commenters recommended the deletion of § 682.603(c), which requires that a school delay loan certification for first time Stafford and SLS borrowers entering the first year of an undergraduate program of study. The commenters stated that this provision is no longer necessary because section 428G(b)(1) of the Act now requires delayed delivery of loan proceeds to the same category of borrowers until 30 days after the borrower begins a course of study.

Discussion: The Secretary agrees with the commenters.

Changes: Section 682.603(c) of the regulations has been deleted.

Section 682.603(d)

Comment: Several commenters suggested that the school should not be required to monitor annual loan limits in certifying an application for a loan. The commenters believe that the school's sole responsibility in the loan certification process should be to determine the applicant's unmet need for loan eligibility.

Discussion: A school's responsibility for monitoring a student's annual loan limits and aggregate maximum loan limits is mandated by section 484(g) of the Act. Also, 34 CFR 668.19(a)(4)(ii) stipulates that a school must return to the lender any Stafford or SLS proceeds that, according to a financial aid transcript, would cause the student to exceed a loan limit under the Stafford or SLS programs. A school is held responsible for information relating to an applicant's annual and aggregate loan limits to the extent that the school's records contain such information.

Changes: None.

Section 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

Section 682.604(b)(2)

Comments: Many commenters disagreed with the requirement of § 682.604(b)(2)(ii) that bases the school's ability to deliver loan proceeds to a student who delays attendance on whether the student notifies the school of his or her plans. Commenters believe that a school should be able to consider any student who begins attendance no later than 30 days after the first day of classes to have maintained eligibility for the loan.

Discussion: The Secretary agrees that the school should be allowed to consider such a borrower to have maintained eligibility and deliver the loan proceeds even if the student does not notify the school of his or her intentions. However, the school also must comply with the change made in § 682.604(d)(3), which requires that if the student fails to register or begins attendance on a delayed basis, the school must return the check to the lender no later than 30 days after the first day of the period of enrollment. To comply with this requirement, the school must develop a system to monitor whether students begin attendance on a delayed basis in sufficient time to prevent having to return the check to the lender by the 30th day.

Changes: A change has been made. A school may consider a student to have maintained eligibility from the first day of the period of enrollment if the student delays attendance.

Comments: Many commenters objected to the proposal that a school could deliver FFEL loan proceeds to a student after the school receives notice of its loss of institutional eligibility if the first disbursement of the loan had been delivered to the student before the institution's receipt of the notice. The commenters believe that the student only will have incurred increased debt for a program of questionable quality and that this provision is not in the best interests of the FFEL programs.

Discussion: The Secretary notes that 34 CFR 668.25(c) authorizes a school to deliver loan proceeds under these circumstances. *See* 56 FR 33332, 33341 (July 19, 1991). The Secretary believes it is important to provide the second disbursement of a FFEL program loan to a student who has received the first disbursement of the loan, and who has completed a significant portion of his or her program of study. The Secretary believes that a loss of access to loan funds will present serious obstacles to the student's completion of the program and will, as a result, precipitate a default. Although the Secretary shares the commenters' concern that the borrower has incurred increased debt, the Secretary believes the borrower is better served by having the opportunity to complete his or her program of study and secure employment.

Changes: None.

Section 682.604(c)(3)

Comment: Many commenters objected to the exception provided in proposed § 682.604(c)(3) that would permit delivery of loan proceeds through EFT to borrowers attending an initial loan-counseling session without written authorization. The commenters stated that it was unclear whether the Secretary intended to exempt these borrowers from providing written authorization for the release of loan funds or from the 30-day time frame provided for securing written authorization. Many commenters questioned the relationship between attending an initial loan-counseling session and providing written authorization.

Discussion: The Secretary agrees with the commenters that the purpose of the exception is unclear. The Secretary also believes that the proposed exception would be contrary to the Secretary's long-standing view that the borrower's written authorization for the release of loans by EFT is a vital measure to protect students in the FFEL programs.

Changes: The exception has been deleted from § 682.604(c)(3).

Section 682.604(d)

Comments: A number of commenters objected to the proposed requirement under § 682.604(d)(1)(ii)(B) that if a student asks the school to help manage his or her loan funds for the academic year, the school must establish a separate trust account. Many commenters believe that the requirement is both administratively burdensome and costly to a school. The commenters also indicated that such a student service should be optional rather than required.

Discussion: The Secretary has decided to permit, but not require, schools to

provide this service to help students budget loan proceeds. If a school chooses to offer this student service, all of the excess loan proceeds that students request the school to hold in its account must be maintained in a separate account. The Secretary does not intend to require that a separate account be maintained for each borrower. However, consistent with provisions in the Campus-Based program regulations, these may not be commingled with other accounts of the school. The account may be an interest-bearing account. The Secretary considers the interest earned by the school on this account to be an administrative allowance for providing this student service.

Change: A change has been made. The regulations have been changed to provide that if the student requests, in writing, that the school hold loan funds to assist the student in budgeting those funds, a school may, but is not required to do so.

Section 682.604(f)

Comment: A number of commenters suggested that the requirement that the initial counseling required by § 682.604(f) be conducted either in person or by videotape presentation is not a reasonable expectation for a student who is enrolled in foreign study abroad under the auspices of a school in the United States.

Discussion: The Secretary agrees with the commenters.

Change: The regulations have been revised to provide that the initial counseling requirement for students enrolled in a program of study abroad approved for credit by the home institution will be the same as that for students enrolled in a correspondence program.

Section 682.605 Determining the Date of a Student's Withdrawal.

Section 682.605(b)(1)

Comment: Several commenters argued that the regulations should impose a limit on the period in which a school has to determine that a student has withdrawn if the student does not formally withdraw. They believe that a time limit is essential because such a determination directly affects a student's right to a refund and the timely payment of a refund to a lender on behalf of the student.

Discussion: The Secretary agrees that there should be a maximum time period for a school to determine a student's date of withdrawal under § 682.605(b)(1)(ii). The Secretary believes that the lack of a specific time period exacerbates the problem of unpaid and untimely refunds.

Changes: A change has been made. The Secretary has revised the regulations to provide that if the student drops out without notifying the school, the school must determine the student's date of withdrawal no later than 45 days after the expiration date of the academic term for a school with standard terms, and no later than 25 days after a student's last date of attendance for a schoool using clock hours or credit hours without standard terms. The Secretary believes the time frames established in these regulations are reasonable given the different methods used for determining progress at various schools.

Section 682.605(b)(2)

Comment: One commenter objected to the proposed rule requiring a school to determine the withdrawal date for a student who was granted a leave of absence, approved under paragraph (c) of this section, and who fails to return to school at the expiration of the leave of absence, to be the date of the first day of the leave of absence. The commenter argued that this requirement conflicts with the requirement of § 682.607(c)(2) that requires a school to pay a refund to a lender within 30 days after the last day of a student's approved leave of absence should the student not resume his or her program of study.

Discussion: The Secretary disagrees with the commenter. The Secretary notes that § 682.605(b)(2) establishes a procedure for a school to determine the withdrawal date for a student who fails to return to school after a leave of absence has expired. This date is determined for the purpose of a school reporting to the lender the date the student has withdrawn from the school and for determining when a refund must be paid under § 682.606. The Secretary also notes that § 682.607(c)(2) requires that a school must make a refund, if applicable, within 30 days after the last day of a leave of absence, not 30 days after the withdrawal date.

Changes: None.

Section 682.609 Remedial Actions

Section § 682.609(a)

Comment: Many commenters stated that a borrower whose eligibility has been affected by a school's error in determining financial need or in certifying the loan application should not lose the rights and benefits afforded other eligible FFEL program loan borrowers if the school is required to purchase all or a portion of the loan. The commenters believed that the school should absorb any losses on interest benefits or special allowance payments resulting from such a situation.

Discussion: The Secretary does not believe that a change to the regulations is necessary. It has been the Secretary's longstanding view that a student who becomes ineligible for a loan due to a school error does not lose his or her rights. The school, like any other holder of a FFEL program loan, is bound by the terms of the promissory note. The school is also responsible for payment to the Secretary of any interest and special allowance paid by the Secretary on the ineligible portion of the loan.

Changes: None.

Section 682.610 Administrative and Fiscal Requirements for Participating Schools

Section § 682.610(b)

Comment: Several commenters recommended that § 682.610(b) of the regulations be revised to allow a school to keep a copy of the loan certification data electronically transmitted by the school to the lender or guaranty agency in lieu of a copy of a paper application form. The commenters believe it is important for the regulations to reflect the electronic application processing now in place at many schools.

Discussion: The Secretary agrees that the regulations should reflect electronic application processing and schools should be allowed to comply with the record-retention requirements by maintaining this data in a computer or optical-disk medium. The Secretary expects, however, that a school, upon request, will be able to produce a hard copy of the loan certification data.

Changes: The regulations have been revised to allow a school to retain the data electronically transmitted as part of the loan certification process to satisfy the record-retention requirements.

Section 682.610(d)

Comment: Several commenters expressed concern that the 5-year record-retention requirement under § 682.610(d)(1) is not long enough. The commenters believe the information contained in a school's record on a borrower is useful when the borrower enters the repayment period or when a default claim is filed, which may be after 5 years.

Discussion: The Secretary agrees with the commenters. In addition, the Secretary recognizes that there may be instances when it is necessary for schools to retain records to respond to on-going audits.

Changes: The regulations have been revised to require the school to retain

records for 5 years after the borrower's last day of attendance and to retain records involved in any loan, claim, or expenditure questioned by a Federal audit until the audit questions have been resolved.

Comment: A number of commenters suggested that the inspection requirements in § 682.610(e)(2) deny a school due process and are unreasonable.

Discussion: The Secretary believes that it is imperative that the Department's representatives have complete access to a school's records during an investigation of the school's administration of the Title IV programs. Further, the Secretary believes, and his experience has shown, that allowing the presence of a school representative during an interview with school personnel or allowing the school to record the interview would result in less than a candid exchange of information among investigators and the personnel interviewed. The Secretary believes the school receives sufficient due process related to findings that might result from such an inspection and does not believe that a prohibition on attendance at interviews by school representatives violates due process.

Changes: None.

Section 682.610(f)

Comment: Several commenters argued that § 682.610(f)(2), which requires the school to notify the holder of a borrower's loan within 30 days of receiving information on the borrower's change of permanent address, is an administrative burden for the school because the provision places no limits on the reporting requirement. The commenters noted that as written the requirement applies to all borrowers who ever attended the school for the life of their loans, the duration of which the school is unlikely to even know. The commenters also indicated that they believe the requirement is not feasible since loan transfers are now commonplace and schools do not always know the current holder of a borrower's loan.

Discussion: The Secretary understands that a school might not always know the current holder of a borrower's loan. However, in light of the increasing volume of loan defaults, the Secretary believes that schools have a particular responsibility to share any information they have on a borrower's whereabouts. The Secretary agrees with the commenters that a requirement that the school provide information within 30 days of the school's receipt of the information throughout the life of the borrower's loan, without regard to the lender's need for the information, might be overly burdensome.

Changes: The regulations have been revised to require the school to notify the current holder of the loan of a borrower's change of permanent address only while the borrower is enrolled at the school. Section 682.610(f)(1) continues to require the school to provide this information upon request of the Secretary, guaranty agency, or lender.

Section 682.700 Purpose and Scope

Section 682.700

Comment: Several commenters asked the Secretary to clarify whether subpart G, which governs fine, limitation, suspension, and termination proceedings, applies directly to actions taken by guaranty agencies or whether policies of the guaranty agency must be consistent with, but not the same as, subpart G.

Discussion: The Secretary specifies in § 682.401(b)(6)(i)(A) that lender's eligibility may be subject to a limitation, suspension, or termination action by a guaranty agency under standards and procedures that are substantially the same as subpart G.

Changes: None.

Section 682.701 Definitions of Terms Used in This Subpart

Section 682.701 Disqualification

Comment: A commenter expressed concern that the NPRM would revise current policy regarding the Department's review of guaranty agency Limitation, Suspension, and Termination (L, S, & T) actions to allow disqualifications based on a guaranty agency's termination to last indefinitely rather than the 18 months specified in current Department bulletins. The commenter believes that a guaranty agency should not be able to trigger indefinite disqualification of a lender or school from the FFEL programs. Accordingly, the commenter urged the Secretary to incorporate the current 18-month limitation in the final regulations.

Discussion: Sections 682.710 and 682.711 of the regulations allow a lender to request removal of a limitation 12 months after it is imposed and reinstatement of its eligibility 18 months after termination. However, section 432(h)(2)(C) of the Act specifies that the Secretary shall not lift a disqualification until the Secretary is satisfied that the lender has corrected the failures that led to the limitation, suspension, or termination action by the guaranty agency and there are assurances that, in the future, the lender will comply with all program requirements. Because the Secretary is required to apply qualitative standards in deciding whether to lift sanctions, he does not believe it is appropriate to impose a time limit such as the commenter suggests.

Changes: None.

Section 682.702 Effect on Participation

Section 682.702(c)

Comment: Many commenters suggested that the Secretary prohibit a lender that is subject to an L, S, & T proceeding from making a second or subsequent disbursement on a loan for which a guarantee commitment has been issued.

Discussion: The Secretary believes that it is important to provide a student who has received the first disbursement of a FFEL program loan access to subsequent disbursements of the loan. The Secretary believes that a loss of access for such a student will present serious obstacles to the student's completion of the program and will, as a result, precipitate a default.

Changes: None.

Section 682.704 Emergency Action

Section 682.704(c)

Comment: Many commenters suggested that the Secretary revise the date an emergency action becomes effective from the date the notification of the action is mailed to the lender to the date the lender actually receives the notification. The commenters believe that such a change is necessary to ensure that an emergency action does not become effective before the lender receives notification of that action.

Discussion: The Secretary does not agree. The Secretary believes that the date an emergency action against a lender becomes effective should be consistent with the date an emergency action taken against an institution becomes effective, which, pursuant to section 487(c)(1)(E) of the Act, is the date on which the notification is mailed. The regulations also specify that the notice must be sent by certified mail, return receipt requested.

Changes: None.

Section 682.705 Suspension Proceedings

Section 682.705(b)(2)

Comment: Many commenters suggested that the Secretary revise the date a lender's suspension becomes effective from the date the notification of the suspension is mailed to the lender to the date the lender receives the notification. The commenters believe that such a change is necessary to

ensure that the suspension does not become effective before the lender receives the notification of the suspension.

Discussion: Unlike the emergency actions, which are intended to have immediate effect, suspensions do not take effect until after an opportunity is provided for a hearing. Therefore, the Secretary has revised the regulations to give a lender notice of an impending suspension.

Changes: A change has been made. The Secretary has revised the regulations to provide that a lender's suspension will become effective on a proposed date that is at least 20 days after the date the Secretary's notice is mailed to the lender.

Section 682.706 Limitation or Termination Proceedings

Section 682.706(c)

Comment: One commenter suggested that, in the event the lender's owner or an officer is convicted of, or pleads nolo contendere or guilty to, a crime involving FFEL program administration, the provision that a lender be subject to automatic termination is too severe a penalty to impose on a lender that is discovered to have one dishonest officer or employee. The commenter suggested that the discretionary authority afforded the Secretary in § 682.712(c) should specify that an automatic termination under this section may be waived.

Discussion: The language in the regulations provides that such a criminal conviction is grounds for the Secretary to terminate a lender's eligibility. It does not, however, automatically terminate the lender's eligibility. The Secretary will make this determination on a case-by-case basis.

Changes: None.

Section 682.709 Reimbursements, Refunds, and Offsets

Comment: A number of commenters requested that the Secretary clarify the authority of a guaranty agency to require a school to repay FFEL funds owed to borrowers and lenders. The commenters stated that this authority should be explicitly spelled out in the regulations because guaranty agencies generally identify school error that results in liability or the repurchase of FFEL loans by the school.

Discussion: The Secretary agrees that this authority should be explicit in regulations and also believes that the agency's general enforcement authority should be clarified. However, he does not believe that these regulatory changes should be contained in § 682.709.

Changes: Section 682.609 of the regulations has been revised to contain a new paragraph (e) that specifies that a guaranty agency may take an emergency action against a school or limit, suspend, or terminate the school's participation in the agency's loan guarantee program and may require the school to repay funds to another party or to purchase loans.

Section 682.712 Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guaranty Agencies Against Lenders

Section 682.712

Comment: One commenter recommended that if the Secretary upholds an agency's termination of a lender, the Secretary also should rely upon the agency's determination that the lender's failures have been corrected. The commenter suggested adding "guaranty agency" after "Disqualification by the Secretary."

Discussion: Section 432(h)(2)(B) of the Act requires the Secretary, before lifting any limitation, suspension, or termination sanction imposed on a lender, to make an independent determination that the lender has corrected the failures that led to the sanction. The Secretary notes, however, that nothing in the regulations prevents a guaranty agency from continuing a limitation or termination sanction even if the Secretary removes a national disqualification. The Secretary notes that the 1992 Amendments deleted the term "disqualification" as it was previously used to refer to the steps by which a guaranty agency's sanction against a lender or school received national effect. This change is a change in terminology and not in substance. However, the Secretary has not made that change to this regulation. The Secretary will issue new regulations to conform to the new statute at a later date.

Changes: None.

Sections 682.712 and 682.713

Comment: One commenter suggested that the Secretary revise the final regulations to provide for an evidentiary hearing by the Department for an institution or lender that has an L, S, or T action taken against it by a guaranty agency. The commenter argued that section 432(h) (2) and (3) of the Act provides that a lender or an institution that has an L, S, or T action taken against it by a guaranty agency is entitled to a trial-type evidentiary hearing.

Discussion: The Secretary does not agree with the commenter. The regulations do not preclude the use of an evidentiary hearing in a disqualification proceeding if the presiding officer determines that such a hearing is necessary. However, the Secretary believes that evidentiary proceedings in disqualification cases will be very rare. The only issues are whether the guaranty agency used the proper standards and procedures. Moreover, under the 1992 Amendments, the Department's review is limited to a review of the written record of the proceedings and the agency's procedures. Thus, the issues in a proceeding under §§ 682.712 and 682.713 should not present any questions requiring an evidentiary hearing.

Changes: A change has been made in §§ 682.712 and 682.713 of the regulations to delete references to a hearing on the record.

Section 682.800 Special Allowance Payments for Loans Financed by Proceeds of Tax-Exempt Obligations

Section 682.800(a)(2)

Comment: Several commenters recommended that the regulations be revised to clarify that an Authority whose Plan for Doing Business was subsequently approved by the Governor is eligible to receive special allowance on obligations issued before the November 16, 1986, date established by the 1986 Amendments.

Discussion: The Secretary agrees with the commenters that this section as currently written does not address special allowance payments for this category of loans.

Changes: A change has been made. The Secretary has revised § 682.800(a)(2) to provide for special allowance payments on obligations issued before November 16, 1986 on the basis of a Plan approved by the Governor after that date.

Section 682.801 Provisions Required in Plan

Section 682.801(h)

Comment: A number of commenters felt that § 682.801(h), which proposed to prohibit an Authority from issuing tax-exempt obligations in excess of the unmet need for student loan credit in its service area, should be deleted because it is not one of the criteria listed in section 438(d)(2) of the Act.

Discussion: The Secretary agrees with the commenters that a demonstration of the need for tax-exempt financing is not required as part of the Plan. In addition, the Department of Treasury regulations governing caps on tax-exempt financing prevent the excessive use of tax-exempt financing.

Changes: Section 682.801(h) has been deleted from the regulations. The Secretary has also deleted the corresponding provision in § 682.802(g).

Sections 682.802 682.805

Comment: Several commenters recommended deleting these sections as the authority for the approval of the Plan for Doing Business was shifted to the Governor of the State in the 1986 Amendments. The commenters questioned the Secretary's authority to (1) regulate the required documentation submitted with the Plan; (2) enforce, suspend, or revoke a Plan that previously was approved by a Governor for the Authority's failure to comply with the Plan; or (3) impose sanctions for material misrepresentations.

Discussion: The Secretary believes that the fact that he does not directly approve the Plan does not prohibit him from enforcing program requirements. Clearly, in revising section 438(d) of the Act to provide the authority to the Governor to approve the Authority's Plan for Doing Business, Congress did not intend for the Secretary to permit non-compliance with the law.

Changes: None.

Section 682.830 Audit Standards

Section 682.830(a)

Comment: Some commenters felt the audit required by § 682.830 should be limited to a financial audit and the requirement that the audit also should cover the Authority's compliance with its Plan for Doing Business should be deleted. The commenters believe that the guaranty agency's program review required under § 682.410(c) addresses the issues normally covered by a compliance audit and that requiring an outside auditor to examine compliance is duplicative. Other commenters argued that if an Authority received a financial and compliance audit from an independent auditor, it should be exempted from review by the guaranty agency.

Discussion: The Secretary does not agree that a guaranty agency's review would duplicate the compliance audit required by § 682.830. Guaranty agency reviews often focus on a single area, e.g., due diligence. The Secretary believes that the familiarity of guaranty agency officials with the FFEL programs provides for a more focused review than the compliance audit would require. Additionally, a determination of the Authority's compliance with its Plan for Doing Business generally is not covered by a guaranty agency program review. The Secretary believes, therefore, that exempting an Authority that has undergone an independent audit from a guaranty agency review would run counter to the best interests of the FFEL programs, even if the review and the audit overlap in some areas.

Changes: None.

Section 682.840 Prohibition Against Discrimination as a Condition for Receiving Special Allowance Payments

Section 682.840(b)

Comment: Several commenters recommended the deletion of § 682.840(b), which prohibits an Authority from receiving special allowance payments on loans guaranteed by an agency or organization that discriminates against borrowers. The commenters believe that an Authority should not be held responsible for the practices of another entity over which the Authority has no direct control. The commenters also noted that section 439(e) of the Act has a similar provision for the Student Loan Marketing Association ("Sallie Mae"), but that no similar provision jeopardizing the special allowance on loans held by Sallie Mae has ever been proposed. Some commenters said that this requirement unfairly penalizes an Authority in a State where the guaranty agency is prohibited by State law from guaranteeing loans to students attending a particular eligible institution.

Discussion: Under section 438(d)(3) of the Act, an Authority may not engage in any pattern or practice that results in a denial of a borrower's access to loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular eligible institution within the area served by the Authority, the length of the borrower's educational program, or the borrower's academic year in school. The Secretary considers an Authority "to have adopted a practice of denying access to loans" if it does business with an entity (e.g., a guaranty agency) that denies access to loans to eligible students in violation of similar restrictions on the guaranty agency contained in section 428(c)(2)(F) of the Act. Section 438(d)(3) also requires the Secretary to deny special allowance payments to holders of loans that were made or purchased with funds obtained from the Authority if the Authority discriminates. Therefore, the Secretary believes his authority to withhold special allowance payments applies to the Authority and to any holder acting as trustee for the Authority. The Secretary also notes that the Department is specifically prohibited from regulating the activities of Sallie Mae. Nonetheless, Sallie Mae is required to comply with the requirements of section 439(e) of the Act.

Changes: None.

Waiver of Proposed Rulemaking

In addition to the changes made to part 682 based on public comment on the notice of proposed rulemaking, the Secretary has revised the regulations to include technical amendments made by certain legislation enacted subsequent to publication of the notice of proposed rulemaking.

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations 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. However, since these changes merely incorporate statutory changes into the regulations and do not implement substantive policy, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C.(b)(B) that public comment on the regulations 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 notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: December 4, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.032, Stafford Loan Program and PLUS Program)

The Secretary revises part 682 of title 34 of the Code of Federal Regulations to read as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

Subpart A—Purpose and Scope

Sec.
682.100 The Federal Family Education Loan programs.
682.101 Participation in the FFEL programs.
682.102 Obtaining and repaying a loan.
682.103 Applicability of subparts.

Subpart B—General Provisions

682.200 Definitions.
682.201 Eligible borrowers.
682.202 Permissible charges by lenders to borrowers.
682.203 Responsible parties.
682.204 Maximum loan amounts.
682.205 Disclosure requirements for lenders.
682.206 Due diligence in making a loan.
682.207 Due diligence in disbursing a loan.
682.208 Due diligence in servicing a loan.
682.209 Repayment of a loan.
682.210 Deferment.
682.211 Forbearance.
682.212 Prohibited transactions.
682.213 Prohibition against the use of the Rule of 78s.
682.214 Compliance with equal credit opportunity requirements.

Subpart C—Federal Payments of Interest and Special Allowance

682.300 Payment of interest benefits on Stafford loans.
682.301 Eligibility of borrowers for interest benefits on Stafford loans.
682.302 Payment of special allowance on FFEL loans.
682.303 [Reserved]
682.304 Methods for computing interest benefits and special allowance.
682.305 Procedures for payment of interest benefits and special allowance.

Subpart D—Administration of the Federal Family Education Loan Programs by a Guaranty Agency

682.400 Agreements between a guaranty agency and the Secretary.
682.401 Basic program agreement.
682.402 Death, disability, and bankruptcy payments.
682.403 Federal advances for claim payments.
682.404 Federal reinsurance agreement.
682.405 [Reserved]
682.406 Conditions of reinsurance coverage.
682.407 Administrative cost allowance for guaranty agencies.
682.408 Loan disbursement through an escrow agent.
682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.
682.410 Fiscal, administrative, and enforcement requirements.
682.411 Due diligence by lenders in the collection of guaranty agency loans.
682.412 Consequences of the failure of a borrower or student to establish eligibility.
682.413 Remedial actions.
682.414 Records, reports, and inspection requirements for guaranty agency programs.

Subpart E—Federal Guaranteed Student Loan Programs

682.500 Circumstances under which loans may be guaranteed by the Secretary.
682.501 Extent of Federal guarantee under the Federal GSL programs.
682.502 The application to be a lender.
682.503 The guarantee agreement.
682.504 Issuance of Federal loan guarantees.
682.505 Insurance premium.
682.506 Limitations on maximum loan amounts.
682.507 Due diligence in collecting a loan.
682.508 Assignment of a loan.
682.509 Special conditions for filing a claim.
682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.
682.511 Procedures for filing a claim.
682.512 Determination of amount payable on a claim.
682.513 Factors affecting coverage of a loan under the loan guarantee.
682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for Federal GSL loans.
682.515 Records, reports, and inspection requirements for Federal GSL program lenders.

Subpart F—Requirements, Standards, and Payments for Participating Schools

682.600 Agreement between an eligible school and the Secretary for participation in the FFEL programs.
682.601 Rules for a school that makes or originates loans.
682.602 Correspondence school schedule requirements.
682.603 Certification by a participating school in connection with a loan application.
682.604 Processing the borrower's loan proceeds and counseling borrowers.
682.605 Determining the date of a student's withdrawal.
682.606 Refund policy.
682.607 Payment of a refund to a lender.
682.608 Termination of a school's lending eligibility.
682.609 Remedial actions.
682.610 Administrative and fiscal requirements for participating schools.

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

682.700 Purpose and scope.
682.701 Definitions of terms used in this subpart.
682.702 Effect on participation.
682.703 Informal compliance procedure.
682.704 Emergency action.
682.705 Suspension proceedings.
682.706 Limitation or termination proceedings.
682.707 Appeals in a limitation or termination proceeding.
682.708 Evidence of mailing and receipt dates.
682.709 Reimbursements, refunds, and offsets.
682.710 Removal of limitation.
682.711 Reinstatement after termination.
682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.
682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.

Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

682.800 Special allowance payments for loans financed by proceeds of tax-exempt obligations.
682.801 Provisions required in Plan.
682.802 Submission of Plan for approval—required documentation.
682.803 Amendments to Plan for Doing Business.
682.804 Failure to comply with Plan for Doing Business.
682.805 Sanctions for material misrepresentation.
682.806–682.829 [Reserved]
682.830 Audit standards.
682.831–682.839 [Reserved]
682.840 Prohibition against discrimination as a condition for receiving special allowance payments.

Appendix A—Standards for Acceptable Refund Policies by Participating Schools

Appendix B—Students Status Confirmation Report

Appendix C—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L-77a]

Appendix D—Policy for Waiving the Secretary's Right To Recover or Refuse To Pay, Interests Benefits, Special Allowance, and Reinsurance on Stafford, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin SS-G-138]

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

Subpart A—Purpose and Scope

§ 682.100 The Federal Family Education Loan programs.

(a) This part governs the following four programs collectively referred to in these regulations as "the Federal Family Education Loan (FFEL) programs," in which lenders use their own funds to make loans to enable a student or his or her parents to pay the costs of the student's attendance at postsecondary schools:

(1) The Federal Stafford Loan (Stafford) Program, which encourages making loans to undergraduate, graduate, and professional students.

(2) The Federal Supplemental Loans for Students (SLS) Program, which encourages making loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(3) The Federal PLUS (PLUS) Program, which encourages making loans to parents of dependent students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students.

(4) The Federal Consolidation Loan (Consolidation) Program, which encourages making loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received while they were students, under the Federal Insured Student Loan (FISL), Stafford loan, SLS, PLUS (as in effect before October 17, 1986), and Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of Title VII of the Public Health Service Act and for parent PLUS borrowers whose loans were made after October 17, 1986.

(b)(1) Except for the loans guaranteed directly by the Secretary described in paragraph (b)(2) of this section, a guaranty agency guarantees a lender against losses due to default by the borrower on a FFEL loan. If the guaranty agency meets certain Federal requirements, the guaranty agency is reimbursed by the Secretary for all or part of the amount of default claims it pays to lenders.

(2)(i) The Secretary guarantees lenders against losses—

(A) Within the Stafford Loan Program, on loans made under Federal Insured Student Loan (FISL) Program;

(B) Within the PLUS Program, on loans made under the Federal PLUS Program;

(C) Within the SLS Program, on loans made under the Federal SLS Program; and

(D) Within the Consolidation Loan Program, on loans made under the Federal Consolidation Loan Program.

(ii) The loan programs listed in paragraph (b)(2)(i) of this section collectively are referred to in these regulations as the "Federal Guaranteed Student Loan (GSL) programs."

(iii) The Federal GSL programs are authorized to operate in States not served by a guaranty agency program. In addition, the FISL and Federal SLS programs are authorized, under limited circumstances, to operate in States in which a guaranty agency program does not serve all eligible students.

(Authority: 20 U.S.C. 1701 to 1087–2)

§ 682.101 Participation in the FFEL programs.

(a) Eligible banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State and private nonprofit agencies may make loans.

(b) Eligible educational institutions, including most colleges, universities, graduate and professional schools, and many vocational, technical, and correspondence schools may participate as schools, enabling an eligible student or his or her parents to obtain a loan to pay for the student's cost of education.

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the Stafford loan and SLS programs. Parents of eligible dependent students may borrow under the PLUS Program. Students borrowers who have at least $7,500 outstanding in Stafford, SLS, FISL, Perkins, HPSL, student PLUS loans or Parent PLUS loans borrowed after October 16, 1986 may borrow under the Consolidation Loan Program.

(Authority: 20 U.S.C. 1071 to 1087–2)

§ 682.102 Obtaining and repaying a loan.

(a) *Stafford loan application.* Generally, to obtain a Stafford loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(b) *SLS loan application.* Generally, to obtain an SLS loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(c) *PLUS loan application.* Generally, to obtain a PLUS loan, both the student and the parent complete an application and submit it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(d) *Consolidation loan application.* Generally, to obtain a Consolidation loan, a borrower completes an application and submits it to a lender holding at least one of the borrower's loans to be consolidated. If all the holders of loans selected for consolidation by the borrower refuse to make a Consolidation loan, the borrower may submit the application to any other lender participating in the Consolidation Loan Program. If a lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(e) *Repaying a loan*—(1) *General.* Generally, the borrower is obligated to repay the full amount of the loan, late fees, collection costs chargeable to the borrower, and any interest not payable by the Secretary. The borrower's obligation to repay is cancelled if the borrower dies, becomes totally and permanently disabled, or has that obligation discharged in bankruptcy.

(2) *Stafford loan repayment.* Generally, a borrower is not required to make any principal payments on a Stafford loan during the time the borrower is in school. In most cases, the Secretary pays the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no principal payments are required, and the Secretary continues to make interest payments on the borrower's behalf. At the end of the grace period, the repayment period begins. During the repayment period, the borrower pays both the principal and the interest accruing on the loan.

(3) *SLS loan repayment.* Generally, the repayment period for an SLS loan begins immediately on the day of the last disbursement of the loan proceeds by the lender. The first payment of principal and interest on an SLS loan is due from the borrower within 60 days after the loan is fully disbursed unless a borrower who is also a Stafford loan borrower requests that commencement of repayment on the SLS loan be deferred until the borrower's grace period on the Stafford loan expires.

(4) *PLUS loan repayment.* Generally, the repayment period for a PLUS loan begins immediately upon disbursement of the loan by the lender. The first

payment of principal and interest on a PLUS loan is due from the borrower within 60 days after the loan is fully disbursed.

(5) *Consolidation loan repayment.* Generally, the first payment of principal and interest on a Consolidation loan is due from the borrower within 60 days after the borrower's liability on all loans being consolidated has been discharged.

(6) *Deferment of repayment.* Repayment of principal on a FFEL program loan may be deferred under the circumstances described in § 682.210.

(7) *Default.* If a borrower defaults on a loan, the guarantor reimburses the lender for the amount of its loss. The guarantor then collects the amount owed from the borrower.

(Authority: 20 U.S.C. 1071 to 1087–2)

§ 682.103 Applicability of subparts.

(a) Subpart B of this part contains general provisions that are applicable to all participants in the FFEL programs.

(b) The administration of the FFEL programs by a guaranty agency is subject to subparts C, D, F, and G of this part.

(c) The Federal FFEL programs are subject to subparts C, E, F, and G of this part.

(d) Certain requirements applicable to schools under all the FFEL programs are set forth in subpart F of this part.

(Authority: 20 U.S.C. 1071 to 1087–2)

Subpart B—General Provisions

§ 682.200 Definitions.

(a)(1)(i) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based programs
College Work-Study (CWS) Program
Consolidation Loan Program
Dependent student
Eligible program
Eligible student
Enrolled
Guaranteed Student Loan (GSL) Program
Independent student
National of the United States (Referred to as U.S. Citizen or National in 34 CFR 668.2)
Pell Grant Program
Perkins Loan Program
PLUS Program
State
State Student Incentive Grant (SSIG) Program
Supplemental Educational Opportunity Grant (SEOG) Program
Supplemental Loans for Students (SLS) Program

(ii) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
Educational program
Eligible institution
Institution of higher education (§ 600.4)
Nationally recognized accrediting agency or association
Preaccredited
Program of study by correspondence
Secretary
Vocational school

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

Act. The Higher Education Act of 1965, as amended, 20 U.S.C. 1071 *et seq.*

Actual interest rate. The annual interest rate a lender charges on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate. The maximum annual interest rate that a lender may charge under the Act on a loan.

Authority. Any private non-profit or public entity that may issue tax-exempt obligations to obtain funds to be used for the making or purchasing of FFEL loans. The term "Authority" also includes any agency, including a State postsecondary institution or any other instrumentality of a State or local governmental unit, regardless of the designation or primary purpose of that agency, that may issue tax-exempt obligations, any party authorized to issue those obligations on behalf of a governmental agency, and any non-profit organization authorized by law to issue tax-exempt obligations.

Borrower. An individual to whom a FFEL loan is made.

Co-maker. One of two individuals who are joint borrowers on a PLUS loan and who are jointly and severally liable for repayment of the loan.

Default. The failure of a borrower and endorser, if any, or joint borrowers on a PLUS loan, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary or guaranty agency finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Disbursement. The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer.

Endorser. An individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Escrow agent. Any guaranty agency or other eligible lender that receives the proceeds of a FFEL program loan as an agent of an eligible lender for the purpose of transmitting those proceeds to the borrower or the borrower's school.

Estimated cost of attendance. The tuition and fees normally assessed a student carrying the same academic workload as the student to whom or on whose behalf a FFEL program loan is sought, as determined by the school, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses may not include the purchase of a motor vehicle. They may include, but are not limited to—

(1) The costs for rental or purchase of any equipment, materials, or supplies required of all students in the student's course of study, except for the cost of rental or purchase of telecommunications equipment for a student receiving all or part of his or her instruction by means of that telecommunications technology;

(2) For a student attending the institution on at least a half-time basis, an allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) If applicable, the insurance premium for the loan;

(4) If applicable, the origination fee for the loan;

(5) An allowance, as determined by the school, for room and board costs incurred by the student that includes—

(i) For a student, without dependents, residing at home with parents, an allowance of at least $1,500;

(ii) For a student, without dependents, residing in institutionally owned or operated housing, a standard allowance based on the amount normally assessed most of the school's residents for room and board; and

(iii) For all other students, an allowance of not less than $2,500 for expenses reasonably incurred by those students for room and board;

(6) For a student enrolled in a program of study by correspondence, only the tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(7) For a student enrolled in an educational program that normally includes a formal program of study abroad, reasonable costs associated with that study;

(8) For a student with one or more dependents, an allowance based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(9) For a student with a disability, an allowance for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that reasonably are incurred and not provided by other assisting agencies.

Estimated financial assistance. (1) The estimated amount of assistance that a student has been or will be awarded, during the period of enrollment for which the loan is sought, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(i) Benefits paid under section 156 of title 42 of the United States Code (formerly Social Security Benefits);

(ii) Veterans' educational benefits paid under chapters 30, 31, 32, 34, and 35 of title 38 of the United States Code;

(iii) Educational benefits paid under Chapters 106 and 107 of Title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iv) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(v) The estimated amount of other Federal student financial aid, including, but not limited to, a Stafford loan for which interest benefits are payable under this part, Pell Grants and campus-based aid, that the student would be expected to receive if the student applied, whether or not the student has applied for that aid; and

(vi) If the student is applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior FFEL was received, the amount of Stafford, SLS, and PLUS loan proceeds withheld by the lender on the prior loan to cover the origination fee or insurance premium, if those costs were included in computing the borrower's estimated cost of attendance for the prior loan.

(2) The estimated amount of assistance does not include those amounts used to replace the expected family contribution, including—

(i) Stafford loan amounts for which interest benefits are not payable;

(ii) SLS and PLUS loan amounts;

(iii) Private and state-sponsored loan programs; and

(iv) Perkins loan and College Work-Study funds that the school determines the student has declined for an acceptable reason.

Expected family contribution. The amount a student and his or her spouse and family are expected to pay toward he student's cost of attendance.

Federal GSL programs. The Federal Insured Student Loan Program, the Federal Supplemental Loans for Students Program, the Federal PLUS Program, and the Federal Consolidation Loan Program.

Federal Insured Student Loan Program. The loan program authorized by Title IV–B of the Act under which the Secretary directly insures lenders against losses.

Foreign school. A school not located in a State.

Full-time student. (1) A student enrolled in an eligible institution (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload, as determined by the school under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research, or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(2) A student enrolled in a vocational school (other than a student enrolled in a program of study by correspondence) who is carrying a workload of not less than 24 clock-hours per week or 12 semester or quarter hours per semester or quarter, respectively, of instruction, or its equivalent.

Grace period. The period that begins on the day after a Stafford loan borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins. See also "Post-deferment grace period."

Graduate or professional student. A student who, for a period of enrollment—

(1) Is enrolled in a program 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 academic years of full-time study at an institution of higher education, either before entrance into the program or as part of the program itself; and

(3) Is not receiving aid under Title IV of the Act as an undergraduate student for the same period of enrollment.

Guaranty agency. A State or private nonprofit organization that has an agreement with the Secretary under which it will administer a loan guarantee program under the Act.

Half-time student. A student who is enrolled in a participating school and is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence as defined in 34 CFR 668.8 is considered a half-time student.

Holder. An eligible lender in possession of a FFEL program loan note that is payable to, or has been assigned to the lender, including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

Legal guardian. An individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his or her financial resources for the support of that person.

Lender. (1) The term "eligible lender" is defined in section 435(d) of the Act, and in paragraphs (2)–(4) of this definition.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, a trust company, or a credit union—

(i) The phrase "subject to examination and supervision" in section 435(d) of the Act means "subject to examination and supervision in its capacity as a lender"; and

(ii) The phrase "does not have as its primary consumer-credit function the making or holding of loans made to students under this part" in section 435(d) of the Act means that the lender does not, or in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not at any time, hold FFEL program loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries.

(3) The corporate parent or other owner of a school that qualifies as an eligible lender under section 435(d) of the Act is not an eligible lender unless the corporate parent or owner itself qualifies as an eligible lender under section 435(d) of the Act.

(4) The term "eligible lender" does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has—

(i) Offered, directly or indirectly, points, premiums, payments, or other inducements, to any educational institution or other party to secure applicants for FFEL loans;

(ii) Conducted unsolicited mailings to a student or a student's parents of FFEL loan application forms, except to a student who previously has received a FFEL loan from the lender or to a

student's parent who previously has received a FFEL loan from the lender;

(iii) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(iv) Engaged in fraudulent or misleading advertising with respect to its FFEL program loan activities.

National credit bureau. A credit bureau with a service area that encompasses more than a single region of the country.

Origination relationship. A special business relationship between a school and a lender in which the lender delegates to the school, or to an entity or individual affiliated with the school, substantial functions or responsibilities normally performed by lenders before making FFEL program loans. In this situation, the school is considered to have "originated" a loan made by the lender.

Origination fee. A fee that the lender is required to pay the Secretary to help defray the Secretary's costs of subsidizing the loan. The lender may pass this fee on to the Stafford loan borrower.

Participating school. A school that has in effect a current agreement with the Secretary under § 682.600.

Period of enrollment. The period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with a *bona fide* academic term established by the school for which institutional charges are normally assessed. The period of enrollment is also referred to as the loan period.

Post-deferment grace period. For a loan made prior to October 1, 1981, a single period of six consecutive months beginning on the day following the last day of an authorized deferment period.

Repayment period. (1) For a Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(2)(i) For a PLUS loan disbursed in more than one installment, the period that begins on the date the first disbursement is made for a loan and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance; for a PLUS loan disbursed in a single installment, the period that begins on the date the loan is disbursed and ending no later than 10 years from that date exclusive of any period of deferment or forbearance.

(ii) For an SLS loan, the repayment period begins on the date of the last disbursement of the loan and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(3) For a Consolidation loan, the period that begins on the date the loan is disbursed and ends no later than 12, 15, 20, 25 or 30 years from that date depending upon the sum of the amount of the Consolidation loan, and the unpaid balance on other student loans, exclusive of any period of deferment or forbearance.

School. (1) An "institution of higher education" as that term is defined in section 481 of the Act.

(2) The term includes only those individual units or programs within a school that satisfy the definition of "eligible program" in 34 CFR part 668.

(3) The term does not include any educational institution that employs or uses commissioned salespersons to promote the availability of Stafford, SLS, or PLUS loans for attendance at the institution. For this purpose—

(i) A *commissioned salesperson* is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student acceptances for enrollment, student enrollments, or student retention; and

(ii) *Promote the availability* means—

(A) Provide a prospective or enrolled student with FFEL loan application forms, or names of eligible lenders;

(B) Provide other information relating to the FFEL programs to a prospective or enrolled student in order to encourage the student to finance his or her education with a FFEL loan; or

(C) Otherwise use the availability of FFEL loans as a recruiting or retention tool.

(4) The term does not include any educational institution that has a default rate in excess of the threshold rates established under section 435(a)(2) of the Act.

(5) For purposes of an in-school deferment, the term includes an eligible institution, whether or not it participates in any Title IV program or has lost its eligibility to participate in the FFEL program because of a high default rate.

School lender. A school, other than a correspondence school, that has entered into a contract of guarantee under this part with the Secretary or, a similar agreement with a guaranty agency.

Stafford Loan Program. The loan program authorized by Title IV–B of the Act which encourages the making of loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs. An unsubsidized Stafford loan is a loan that does not qualify for interest benefits under § 682.301(b).

State lender. In any State, a single State agency or private nonprofit agency designated by the State that has entered into a contract of guarantee under this part with the Secretary, or a similar agreement with a guaranty agency.

Temporarily totally disabled. The condition of an individual who, though not totally and permanently disabled, is unable to work and earn money or attend school, during a period of at least 60 days needed to recover from injury or illness. With regard to a disabled dependent of a borrower, this term means a spouse or other dependent who, during a period of injury or illness, requires continuous nursing or similar services for a period of at least 90 days.

Totally and permanently disabled. The condition of an individual who is unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death.

Undergraduate student. A student who is enrolled at a school in a program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five academic years in length, and is designed to lead to a degree or certificate at or below the baccalaureate level.

(Authority: 8 U.S.C. 1101; 20 U.S.C. 1070 to 1087–2, 1088–1098, 1141)

§ 682.201 Eligible borrowers.

(a) *Student borrower.* Except for a refinanced SLS/PLUS loan made under § 682.209 (e) or (f), a student is eligible to receive a Stafford loan, and an independent undergraduate student, a graduate or professional student, or, subject to paragraph (a)(3) of this section, a dependent undergraduate student, is eligible to receive an SLS loan, if the student meets the requirements for an eligible student under 34 CFR part 668, and—

(1) In the case of an undergraduate student who seeks a Stafford loan or SLS loan for the cost of attendance at a school that participates in the Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(2)(i) In the case of any student who seeks an SLS loan for the cost of attendance at a school that participates in the Stafford Loan Program, has received a determination of need for a

Stafford loan, and if determined to have need in excess of $200, has filed an application with a lender for a Stafford loan; and

(ii) In the case of a student who seeks an SLS loan for the cost of attendance at any school that participates in the FFEL programs, the student must have received a certification of graduation from a school providing secondary education or the recognized equivalent;

(3) For purposes of a dependent undergraduate student's eligibility for an SLS loan, is a dependent undergraduate student for whom the financial aid administrator determines and documents in the school's file, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., the student's parent receives only public assistance or disability benefits, is incarcerated, or his or her whereabouts are unknown) from borrowing under the PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a PLUS loan does not constitute an exceptional circumstance;

(4)(i) Reaffirms any FFEL loan amount that previously was cancelled due to the borrower's total and permanent disability; or that was discharged in bankruptcy or that was written off.

(ii) For purposes of this paragraph, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(A) Signing a new promissory note or repayment schedule; or

(B) Making a payment on the loan.

(5)(i) In the case of a borrower whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(ii) Signs a statement acknowledging that any new FFEL loan the borrower receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates;

(6) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such certificate, has passed an independently administered examination approved by the Secretary; and

(7) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(b) *Parent borrower.* A parent is eligible to receive a PLUS Program loan, other than a loan made under § 682.209(e) or (f), if the parent—

(1) Is borrowing to pay for the educational costs of a dependent student who meets the requirements for an eligible student set forth in 34 CFR part 668;

(2) Provides his or her and the student's social security number;

(3) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.7;

(4) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.7;

(5) Except for the completion of a Statement of Selective Service Registration Status, complies with the requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 668; and

(6) Meets the requirement of paragraphs (a)(5) and (a)(6) of this section.

(c) *Consolidation Program borrower.* (1) An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

(i) Has an outstanding indebtedness of not less than $7,500 on loans eligible for consolidation under this part; and

(ii)(A) Is in a grace period preceding repayment;

(B) Is in repayment status; or

(C)(*1*) Is delinquent or has made satisfactory repayment arrangements on a defaulted loan; and

(*2*) Will reenter repayment through consolidation.

(2) A married couple is eligible to receive a Consolidation loan in accordance with this section if each—

(i) Agrees to be held jointly and severally liable for the repayment of the total amount of the Consolidation loan;

(ii) Agrees to repay the debt regardless of any change in marital status; and

(iii) Certifies that no other application for a Consolidation loan is pending and agrees to notify the holder of any change in address.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1091)

§ 682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) *Interest*—(1) *Applicable interest rates under the Stafford Loan Program.*

(i) Subject to paragraph (a)(1)(ii) of this section, the applicable interest rate on a Stafford loan for a borrower is—

(A) 7 percent for a loan covering a period of instruction beginning before January 1, 1981;

(B) 9 percent for a loan covering a period of instruction beginning on or after January 1, 1981, but before September 13, 1983;

(C) 8 percent for a loan covering a period of instruction beginning on or after September 13, 1983;

(D) For a loan covering a period of instruction beginning on or after July 1, 1988, 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter;

(E) Subject to paragraph (a)(1)(vi) of this section, for a loan for which the first disbursement is made on or after October 1, 1992, a variable rate not to exceed 9 percent; or

(F) Subject to paragraph (a)(1)(v) of this section, for a loan for which the first disbursement is made on or after October 1, 1992, 8 percent.

(ii) If the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance on a previous Stafford loan the applicable interest rate is the rate charged on that previous Stafford loan.

(iii) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988 or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988 the applicable interest rate is the rate provided in paragraph (a)(1)(i)(C) of this section.

(iv) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford, PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the applicable interest rate is the rate provided in paragraph (a)(1)(i)(D) of this section.

(v) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on an SLS, PLUS, or Consolidation loan, for a Stafford loan for which the first disbursement is made on or after October 1, 1992, the applicable interest rate is the rate provided in paragraph (a)(1)(i)(C) of this section.

(vi) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance of principal or interest on any FFEL Program loan, the applicable rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held prior to June 1, plus 3.10 percent; or

(B) 9 percent.

(vii) For a loan with an interest rate of 10 percent, if at the end of any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.25 percent, is less than 10 percent, the lender shall—

(A) Calculate an adjustment in an amount specified under paragraph (a)(1)(iv) of this section; and

(B) Credit the adjustment to reduce the outstanding principal balance of the loan as specified under paragraph (a)(1)(v) of this section if the borrower's account is not more than 30-days delinquent on December 31.

(viii) The amount of an adjustment for a calendar quarter is equal to—

(A) 10 percent minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.25 percent;

(B) Multiplied by the outstanding principal balance of the loan (not including unearned interest added to principal);

(C) Divided by 4.

(ix) No later than 30 calendar days after the end of the calendar year, the holder of the loan shall apply any amount computed under paragraph (a)(1)(iv) of this section to reduce the outstanding principal balance as of December 31.

(2) *Applicable interest rates under the PLUS program.* The applicable interest rate on a PLUS loan is—

(i) 9 percent for a loan made on or after January 1, 1981, but before October 1, 1981;

(ii) 14 percent for a loan made on or after October 1, 1981, but before November 1, 1982;

(iii) Except as provided in paragraphs (a)(2) (iv) and (v) of this section, 12 percent for a loan made on or after November 1, 1982;

(iv) For a loan disbursed on or after July 1, 1987, and for any loan made under § 682.209 (e) or (f), a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction held prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.25 percent; or

(B) 12 percent;

(v) For a combined repayment schedule under § 682.209(d), the rate that is the weighted average of the rates of all loans included under that schedule; and

(vi) For a loan disbursed prior to July 1, 1987, if provided for in a promissory note, a variable rate, applicable to each January 1–December 31 period, that equals the lesser of—

(A) The average of the bond equivalent rates of 91-day Treasury bills auctioned during the 12-months ending the November 30 preceding the January 1–December 31 period; plus 3.75 percent; or

(B) 12 percent.

(vii) For a loan for which the first disbursement is made on or after October 1, 1992, a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1–June 30 period, plus 3.1 percent; or

(B) 10 percent.

(3) *Applicable interest rates under the SLS Program.* The applicable interest rate on an SLS Program loan is—

(i) 12 percent for a loan covering a period of enrollment beginning on or after October 17, 1986, but before July 1, 1987;

(ii) For a loan disbursed on or after July 1, 1987, and for any loan made under § 682.209 (e) or (f), a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1–June 30 period, plus 3.25 percent; or

(B) 12 percent; and

(iii) For a combined repayment schedule under § 682.209(d), the rate that is the weighted average of the rates of all loans included under that schedule; and

(iv) For a loan disbursed prior to July 1, 1987, if provided for in a promissory note, a variable rate, applicable to each January 1–December 31 period, that equals the lesser of—

(A) The average of the bond equivalent rates of 91-day Treasury bills auctioned during the 12-months ending the November 30 preceding the January 1–December 31 period, plus 3.75 percent; or

(B) 12 percent.

(v) For a loan for which the first disbursement is made on or after October 1, 1992, a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1–June 30 period, plus 3.1 percent; or

(B) 11 percent.

(4) *Applicable interest rates under the Consolidation Program.* A Consolidation Program loan bears interest at the rate that is the greater of—

(i) The weighted average of interest rates on the loans consolidated, rounded to the nearest whole percent; or

(ii) 9 percent.

(5) *Actual interest rates under the Stafford loan, SLS, PLUS, and Consolidation Programs.* A lender may charge a borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a)(1)–(4) of this section.

(b) *Capitalization.* (1) A lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance in accordance with paragraph (b)(2) of this section. This increase in the principal balance of a loan is called "capitalization."

(2) A lender may capitalize interest payable by the borrower that has accrued—

(i) During the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) During the in-school period or grace period, if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) During a period of authorized deferment;

(iv) During a period of authorized forbearance; or

(v) During the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2)(ii) through (iv) of this section no more frequently than quarterly, except that capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under paragraph (b)(2) (i) and (v) of this section only on the date repayment of principal is scheduled to begin.

(4) Under the SLS and PLUS programs, the lender shall require the borrower to pay on a monthly or quarterly basis or, with the borrower's written consent, capitalize on a quarterly basis interest that has accrued during periods in which the borrower—

(i) Is pursuing a full-time course of study at an eligible institution;

(ii) Is pursuing at least a half-time course of study (as determined by the institution) during an enrollment period

for which the student has obtained a FFEL loan;

(iii) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(iv) Is pursuing a rehabilitation training program for disabled individuals that is approved by the Secretary.

(5) For all borrowers who are in a period of deferment, a required medical or dental internship forbearance, or the in-school or grace period on a nonsubsidized Stafford loan and have agreed to monthly or quarterly payments of interest, the lender may capitalize past due interest after notification to the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) *Origination fee for Stafford, SLS, and PLUS loans.* Except in the case of an unsubsidized Stafford loan, a lender—

(1) May charge a borrower an origination fee on a subsidized Stafford loan not to exceed the maximum rate specified by Federal statute;

(2) Shall charge a borrower an origination fee on an SLS or PLUS loan of 5 percent of the principal amount of the loan;

(3) May deduct the origination fee from the proceeds of the loan;

(4) Shall, in the case of a loan disbursed in multiple installments, deduct a *pro rata* portion of the fee from each disbursement; and

(5) Shall refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan that is attributable to any portion of that loan that is—

(i) Returned by the school to the lender;

(ii) Repaid within 120 days of disbursement; or

(iii) Not delivered within 120 days of disbursement.

(d) *Insurance premium.* A lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor up to 3 percent of the principal amount of the Stafford, SLS, or PLUS loan, if that charge is provided for in the borrower's promissory note.

(e) *Administrative charge for a refinanced PLUS or SLS Loan.* A lender may charge a borrower up to $100 to cover the administrative costs of making a loan to a borrower under § 682.209(e) for the purpose of refinancing a PLUS or SLS loan to secure a variable interest rate.

(f) *Late charge.* (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (f)(2) of this section. This charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower fails to pay all or a portion of a required installment payment within 10 days after it is due.

(g) *Collection charges.* (1) If provided for in the borrower's promissory note, and notwithstanding any provisions of State law, the lender may require that the borrower or any endorser pay costs incurred by the lender or its agents in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs; and

(iii) Telegrams.

(2) The costs referred to in paragraph (g)(1) of this section may not include routine collection costs associated with preparing letters or notices or with making personal contacts with the borrower (e.g., local and long-distance telephone calls).

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1087–1, 1091a)

§ 682.203 Responsible parties.

(a) *Delegation of functions.* A school, lender, or guaranty agency may contract or otherwise delegate the performance of its functions under the Act and this part to a servicing agency or other party. This contracting or other delegation of functions does not relieve the school, lender, or guaranty agency of its duty to comply with the requirements of the Act and this part.

(b) *Trustee responsibility.* A lender that holds a loan in its capacity as a trustee assumes responsibility for complying with all statutory and regulatory requirements imposed on any other holders of a loan.

(Authority: 20 U.S.C. 1082)

§ 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* (1) Except as provided in paragraph (a)(2) of this section, the total amount a student may borrow for any academic year of study under the Stafford Loan Program, including the FISL Program, may not exceed—

(i) $2,625, in the case of an undergraduate student who has not successfully completed the first and second years of the undergraduate program of study in which he or she is currently enrolled;

(ii) $4,000, in the case of an undergraduate student who has successfully completed the first and second years of the undergraduate program of study in which he or she is currently enrolled; and

(iii) $7,500, in the case of a graduate or professional student.

(2) In the case of a student who has not successfully completed the first year of a program of undergraduate education, the total amount a student may borrow may not exceed—

(i) $2,625 for enrollment in a program of study of at least a full academic year in length;

(ii) $1,750 for enrollment in a program of study of at least two-thirds but less than a full academic year in length; and

(iii) $875 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(b) *Stafford Loan Program aggregate limits.* The aggregate guaranteed unpaid principal amount of all Stafford loans made to a student may not exceed—

(1) $17,250, in the case of an undergraduate student for programs of study at the undergraduate level; and

(2) $54,750, in the case of graduate or professional student, including loans for undergraduate study.

(c) *PLUS Program annual limit.* The total amount of all PLUS loans that parents may borrow on behalf of each dependent student for any academic year of study may not exceed $4,000.

(d) *PLUS Program aggregate limit.* The total guaranteed upaid principal amount of PLUS Program loans that parents may borrow on behalf of each dependent student may not exceed $20,000.

(e) *SLS Program annual limit.* (1) The total amount of all SLS loans that a student may borrow for any academic year of study may not exceed $4,000 or, if the student is entering or is enrolled in a program of undergraduate education that is less than one academic year in length and the student's SLS loan application is certified pursuant to § 682.603 by the school on or after January 1, 1990—

(i) $2,500 for a student enrolled in a program of study of at least ⅔ of an academic year but less than a full academic year in length;

(ii) $1,500 for a student enrolled in a program of study less than ⅔ but at least ⅓ of an academic year in length; and

(iii) $0 for a student enrolled in a program of study that is less than ⅓ of an academic year in length.

(2) The minimum period for which a student may apply for an SLS loan is the greater of—

(i) The length of the institution's academic year; or

(ii) Seven consecutive months.

(f) *SLS Program aggregate limit.* The total guaranteed unpaid principal

amount of SLS Program loans made to a student may not exceed $20,000.

(g) *Treatment of Consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Consolidation loan counted against a borrower's aggregate loan limits under the Stafford loan, SLS, PLUS, Perkins Loan, or HPSL program must equal the percentage of the original amount of the Consolidation loan attributable to loans made to the borrower under that program.

(h) In no case may a Stafford, PLUS, or SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Stafford loan that is eligible for interest benefits.

(Authority: 20 U.S.C. 1075, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1089)

§ 682.205 Disclosure requirements for lenders.

(a) *Initial disclosure statement.* (1) Except in the case of a Consolidation loan, a lender shall disclose the information described in paragraph (a)(2) of this section to a borrower in writing before or at the time of the first disbursement on a FFEL program loan. The written information given to the borrower must prominently and clearly display, in bold print, a clear and concise statement that the borrower is receiving a loan that must be repaid.

(2) The lender shall provide the borrower with—

(i) The lender's name, the address to which correspondence with the lender and payments should be sent, and a statement that the lender may sell or transfer the loan to another party, in which case the address and identity of the party to which correspondence and payments should be sent may change;

(ii) The principal amount of the loan;

(iii) The amount of any charges, including the origination fee if applicable, and the insurance premium, to be collected by the lender before or at the time of each disbursement on the loan, and an explanation of whether those charges are to be deducted from the proceeds of the loan or paid separately by the borrower;

(iv) The actual interest rate;

(v) The annual and aggregate maximum amounts that may be borrowed;

(vi) A statement that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to a national credit bureau;

(vii) An explanation of when repayment of the loan is required and when the borrower is required to pay the interest that accrues on the loan;

(viii) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;

(ix) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(x) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

(xi) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;

(xii) A statement of availability of the Department of Defense program for repayment of loans on the basis of military service, as provided for in 10 U.S.C. 2171;

(xiii) The definition of "default" found in § 682.200, and the consequences to the borrower of a default, including a statement concerning likely litigation, a statement that the default will be reported to a national credit bureau, and statements that the borrower will be liable for substantial collection costs, that the borrower's Federal and State income tax refund may be withheld to pay the debt, that the borrower's wages will be garnished or offset, and that the borrower will be ineligible for additional Federal student financial aid, as well as for assistance under most Federal benefit programs;

(xiv) An explanation of the possible effects of accepting the loan on the student's eligibility for other forms of student financial assistance;

(xv) An explanation of any costs the borrower may incur in the making or collection of the loan; and

(xvi) In the case of a Stafford or SLS loan, other than an SLS loan made under § 682.209 (e) or (f) or a loan made to a borrower attending a school that is not in a State, a statement that the loan proceeds will be transmitted to the school for delivery to the borrower; and

(xvii) A statement of the total cumulative balance, including the loan applied for, owed to that lender, and an estimate of, or information that will allow the borrower to estimate, the projected monthly payment amount based on that cumulative outstanding balance.

(b) *Separate statement of borrower rights and responsibilities.* In addition to the disclosures required by paragraph (a) of this section, the lender shall provide the borrower with a separate statement, written in plain English, at or prior to the time of the first disbursement, that—

(1) Summarizes the rights and responsibilities of the borrower with respect to the loan; and

(2) Indicates the consequences to the borrower of defaulting on the loan described in paragraph (a)(2)(xiii) of this section.

(c) *Disclosure of repayment information.* (1) The lender shall disclose the information described in paragraph (c)(2) of this section in a written statement provided to the borrower at or prior to the beginning of the repayment period. In the case of a Stafford or SLS loan, the disclosures required by this paragraph must be made not less than 60 days nor more than 240 days before the first payment on the loan is due from the borrower. In the case of a FISL loan, the lender shall make the disclosures during the grace period. If the borrower enters the repayment period without the lender's knowledge, the lender shall provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period.

(2) The lender shall provide the borrower with—

(i) The lender's name and the address to which correspondence with the lender and payments should be sent;

(ii) The scheduled date the repayment period is to begin;

(iii) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, or the date of the disclosure, whichever is later;

(iv) The actual interest rate on the loan;

(v) An explanation of any fees that may accrue or be charged to the borrower during the repayment period;

(vi) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments;

(vii) Except in the case of a Consolidation loan, an explanation of any special options the borrower may have for consolidating or refinancing the loan and of the availability and terms of such other options;

(viii) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule; and

(ix) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty.

(d) *Exception to disclosure requirement.* In the case of an SLS or PLUS loan, the lender is not required to

provide the information in paragraph (c)(2)(viii) of this section if the lender, in lieu of that disclosure, provides the borrower with sample projections of monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the student is in school. Sample projections must disclose the cost to the borrower of capitalizing—

(1) Principal and interest; and

(2) Interest only.

(e) *Borrower may not be charged for disclosures.* The lender shall provide the information required to be disclosed by paragraphs (a), (b), and (c) of this section at no cost to the borrower.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1083(a))

§ 682.206 Due diligence in making a loan.

(a) *General.* (1) Loan-making duties include processing the loan application and other required forms, approving the borrower for a loan, determining the loan amount, explaining to the borrower his or her rights and responsibilities under the loan, and completing and having the borrower sign the promissory note.

(2) A lender that delegates substantial loan-making duties to a school on a loan thereby enters into a loan origination relationship with the school in regard to that loan. If that relationship exists, the lender may rely in good faith upon statements of the borrower made in the loan application process, but may not rely upon statements made by the school in that process. A non-school lender that does not have an origination relationship with a school with respect to a loan may rely in good faith upon statements of both the borrower and the school in the loan application process. Except as provided in 34 CFR part 668, subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application process.

(b) *Processing forms.* Before disbursing a loan, a lender must determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender may not ask the borrower to sign any form before the borrower has provided on the form all information requested from the borrower.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible borrower. To the extent authorized by paragraph (a)(2) of this section, the lender may rely on the information provided on the application form or data electronically transmitted to the lender by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is sought, in determining the borrower's eligibility for a loan.

(2) In determining the amount of the loan to be made, the lender shall review the data on the student's cost of attendance and estimated financial assistance that is provided by the school. In no case may the loan amount exceed the student's estimated cost of attendance less the sum of—

(i) The student's estimated financial assistance for the period of enrollment for which the loan is intended; and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period.

(3) A lender may not approve a loan for more than the borrower requests, the student's unmet financial need, or the maximum established by § 682.204, whichever is less.

(d) *Promissory note.* (1) The lender shall obtain from the borrower an executed legally enforceable promissory note for each loan as proof of the borrower's indebtedness.

(2) Without the guarantor's prior approval, a lender may not add any clauses to, or modify any provisions of, the most current promissory note provided by the guarantor.

(3) The lender shall give the borrower and any endorser or co-maker a copy of each executed note.

(e) *Security, endorsement, and co-makers.* (1) A FISL or Federal PLUS loan must be made without security or endorsement.

(2) A Federal PLUS Program loan may be made to two eligible parents who agree to be jointly liable for repayment of the loan as co-makers.

(f) *Additional requirement for Consolidation loans.* (1) Prior to disbursement of a Consolidation loan, the lender shall obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that—

(i) The loan is a legal, valid, and binding obligation of the borrower;

(ii) The loan was made and serviced in compliance with applicable laws and regulations; and

(iii) In the case of a FFEL loan, that the guarantee on the loan is in full force and effect.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1) of this section by the holder of a loan to be consolidated.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1083, 1085)

§ 682.207 Due diligence in disbursing a loan.

(a) (1) This section prescribes procedures for lenders to follow in disbursing Stafford, SLS, and PLUS loans, other than a refinanced SLS or PLUS Program loan made under § 682.209 (e) or (f). With respect to FISL, Federal SLS, and Federal PLUS loans, references to the "guaranty agency" in this section shall be understood to refer to the "Secretary."

(2) The requirements of paragraphs (b)(1) (ii) and (v) of this section must be satisfied either by the lender or by an escrow agent with which the lender has an agreement pursuant to § 682.408. The lender shall comply with paragraph (b)(1)(iii) of this section whether or not it disburses to an escrow agent.

(b) (1) In disbursing a loan, a lender—

(i) (A) May not disburse loan proceeds prior to the issuance of the guarantee commitment for the loan by the guaranty agency, except with the agency's prior approval; and

(B) Must disburse a Stafford or SLS loan in accordance with the disbursement schedule provided by the school;

(ii) Shall disburse loan proceeds by—

(A) A check that is made payable to the borrower, or, if required by the guarantor or lender, is made co-payable to the borrower and the school for attendance at which the loan is intended, and requires the personal endorsement or other written certification of the borrower in order to be cashed or deposited in an account of the borrower at a financial institution; or

(B) If authorized by the guarantor, electronic funds transfer to a separate account maintained by the school as trustee for the lender, the guaranty agency, the Secretary, and the borrower, that requires the written approval of the borrower that is secured and retained by the school for each FFEL program loan for which funds are released from the account;

(iii) May not disburse loan proceeds earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made, and, in no case without the Secretary's prior approval, disburse loan proceeds earlier than 30 days prior to the date on which the student is scheduled to enroll;

(iv) Shall require an escrow agent to disburse loan proceeds no later than 21 days after the agent receives the proceeds from the lender;

(v) Shall disburse—

(A) Except as provided in paragraph (b)(1)(v)(C)(*1*) of this section, directly to the school;

(B) In the case of a PLUS loan, a check made co-payable to the institution and the borrower or by electronic funds transfer to a separate account maintained by the school as trustee for the lender; or

(C) In the case of a student enrolled in a study-abroad program approved for credit at the home institution in which the student is enrolled, if the student requests—

(*1*) Directly to the student; or

(*2*) To the home institution if the borrower provides a power-of-attorney to an individual not affiliated with the institution to endorse the check or complete an electronic funds transfer authorization.

(vi) Except as provided in paragraph (d)(2) of this section, may not disburse a second or subsequent disbursement on a Stafford or SLS loan to a student who has ceased to be enrolled.

(2) Except as provided in paragraph (b)(1)(v)(C)(*2*) of this section, neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse or otherwise approve the cashing of a loan check or the release of funds disbursed by electronic funds transfer, nor may a borrower provide this power of attorney or authorization to anyone else. However, the school may present the loan check to a financial institution for deposit in an account of the borrower pursuant to the borrower's written authorization under paragraph (b)(1)(ii)(A) of this section.

(c) A lender shall disburse any Stafford or SLS loan, as follows:

(1) Disbursement must be in two or more installments.

(2) No installment may exceed one-half of the loan.

(3) At least one-half of the period of enrollment for which the loan is made must elapse before the second installment is disbursed, except as necessary to permit the second installment to be disbursed at the beginning of the next semester, quarter, or similar division of the period of enrollment.

(d)(1) Unless prohibited by the guaranty agency, a lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended, in accordance with paragraphs (d)(2) and (3) of this section.

(2) A disbursement described in paragraph (d)(1) of this section may be made—

(i)(A) Only if the loan proceeds will be used to cover documented educational charges to the student that are normally included in a borrower's cost of attendance under section 472 of the Act for a period of enrollment for which the loan was intended and during which the student was actually enrolled on at least a half-time basis;

(B) Only if a student completed the first 30 days of the loan period for which the loan was intended, in the case of a first disbursement of a loan obtained by a student to attend the first year of a program of undergraduate education; or

(C) Only if the student successfully completed the period for which the loan was intended, in the case of second or subsequent disbursement; and

(ii) Within 60 days after the date the student ceases to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was made, whichever is earlier.

(3) The lender shall give notice to the school that the loan proceeds have been disbursed in accordance with paragraph (d)(2) of this section at the time the lender sends the loan proceeds to the school.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1085)

§ 682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to national credit bureaus, responding to borrower inquiries, and establishing the terms of repayment.

(b) (1) An eligible lender of a FFEL loan shall report to at least one national credit bureau—

(i) The total amount of FFEL loans the lender has made to the borrower, within 90 days of each disbursement;

(ii) The outstanding balance of the loans;

(iii) Information concerning the repayment status of the loan, within 90 days after a change in that status from current to delinquent;

(iv) The date the loan is fully repaid by, or on behalf of, the borrower, or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability, within 90 days after that date;

(v) Other information required by law to be reported.

(2) An eligible lender that has acquired a FFEL loan shall report to at least one national credit bureau the information required by paragraph (b)(1)(ii)–(v) of this section within 90 days of its acquisition of the loan.

(c)(1) A lender shall respond within 30 days after receipt to any inquiry from a borrower or any endorser on a loan.

(2) When a lender learns that a Stafford loan borrower is no longer enrolled at an eligible school on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(d) Subject to the rules regarding maximum duration of a repayment period and minimum annual payment described in § 682.209(a)(7), (c), and (h), nothing in this part is intended to limit a lender's discretion in establishing, or, with the borrower's consent, revising a borrower's repayment schedule—

(1) To provide for graduated or income-sensitive repayment terms. The Secretary strongly encourages lenders to provide a graduated or income-sensitive repayment schedule to a borrower providing for at least the payment of interest charges, unless the borrower requests otherwise, in order to make the borrower's repayment burden commensurate with his or her projected ability to pay; or

(2) To provide a single repayment schedule for all FFEL program loans to the borrower held by the lender.

(e)(1) If the assignment of a Stafford, PLUS, or SLS loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and the assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide separate notice to the borrower of—

(i) The assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party to whom subsequent payments must be sent; and

(iv) The telephone numbers of both the assignor and the assignee.

(2) The assignor and assignee must provide the notice required by paragraph (e)(1) of this section separately. Each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(3) For purposes of this paragraph, the term "assigned" is defined in § 682.401(b)(15)(ii).

(f) (1) Notwithstanding an error by the school or lender, a lender shall follow the procedures in § 682.412 whenever it receives information that can be substantiated that the borrower, or the student on whose behalf a parent has borrowed, provided false or erroneous information or took actions that caused the student or borrower—

(i) To be ineligible for all or a portion of a loan made under this part;

(ii) To receive a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301, for which he or she was ineligible; or

(iii) To receive loan proceeds that were not paid to the school or repaid to the lender by or on behalf of a registered student who—

(A) The school notifies the lender under § 682.604(d)(4) has withdrawn or been expelled prior to the first day of classes for the period of enrollment for which the loan was intended; or

(B) Failed to attend school during that period.

(2) For purposes of this section, the term "guaranty agency" in § 682.412(e) refers to the Secretary in the case of a Federal GSL loan.

(g) If, during a period when the borrower is not delinquent, a lender receives information indicating it does not know the borrower's address, it may commence the skip-tracing activities specified in § 682.411(g).

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1085)

§ 682.209 Repayment of a loan.

(a) *Conversion of a loan to repayment status.* (1) For a PLUS loan disbursed in one installment or a Consolidation loan, the repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date the loan is fully disbursed.

(2) (i) For a PLUS loan disbursed in more than one installment, the repayment period begins on the date of the first disbursement made on the loan. The first payment is due within 60 days after the date the loan is fully disbursed.

(ii) For an SLS loan, the repayment period begins on the date the loan is disbursed, or, if the loan is disbursed in multiple installments, on the date of the last disbursement of the loan. Except as provided in paragraph (a)(2)(iii) of this section the first payment is due within 60 days after the date the loan is fully disbursed.

(iii) For an SLS borrower who has not yet entered repayment on a Stafford loan, the borrower may postpone payment, consistent with the grace period on the borrower's Stafford loan.

(3)(i) Except as provided in paragraphs (a)(4) and (5) of this section, for a Stafford loan the repayment period begins—

(A) For a borrower with a loan for which the applicable interest rate is 7 percent per year, not less than 9 nor more than 12 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISL Program, and by the guaranty agency for loans guaranteed by the agency; and

(B) For a borrower with a loan for which the initial applicable interest rate is 8 or 9 percent per year, 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(ii) The first payment on a Stafford loan is due on a date established by the lender that is no more than—

(A) 45 days following the first day that the repayment period begins;

(B) 45 days from the expiration of a deferment or forbearance period;

(C) 45 days following the end of the grace period; or

(D) If the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the date the lender learns that the borrower has entered the repayment period.

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3)(i) of this section begins on the earliest of the date—

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in § 682.602. However, a school may grant the borrower one restoration to in-school status if the borrower fails to submit a lesson within this 60-day period after the due date for submission of a particular assignment if, within the 60-day period, the borrower declares, in writing, an intention to continue in the program and an understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program under the schedule required under § 682.602.

(5) For a Stafford loan, the repayment period begins prior to the end of the grace period if the borrower requests in writing and is granted a repayment schedule that so provides. In this event, a borrower waives the remainder of the grace period.

(6) (i) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period.

(ii) If a graduated or income-sensitive repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment. An agreement as specified in paragraph (c)(1)(ii) of this section is not required if the schedule provides for less than the minimum annual payment amount specified in paragraph (c)(1)(i) of this section.

(7) (i) Subject to paragraphs (a)(7) (ii) through (iv) of this section, a lender shall allow a borrower at least 5 years, but not more than 10 years, to repay a Stafford, SLS, or PLUS loan, calculated from the beginning of the repayment period. Except in the case of a FISL loan for a period of enrollment beginning on or after July 1, 1986, the lender shall require a borrower to fully repay a FISL loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in § 682.210 or § 682.211, respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, 10-, and 15-year periods.

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the lender a repayment period of less than 5 years. Subject to paragraph (a)(7)(iii) of this section, a borrower who makes such a request may, by written notice to the lender at any time during the repayment period, extend the repayment period to a minimum of 5 years.

(8) If, with respect to the aggregate of all loans held by a lender, the total payment made by a borrower for a monthly or similar payment period would not otherwise be a multiple of five dollars, the lender may round that periodic payment to the next highest whole dollar amount that is a multiple of five dollars.

(b) *Prepayment.* (1) The borrower may prepay the whole or any part of a loan at any time without penalty. Except as provided in paragraph (b)(2) of this section, the lender may credit the entire prepayment first to any late charges accrued or collection costs and then to any outstanding interest and then to outstanding principal, unless the borrower requests that the lender credit the prepayment to future installments or a prepayment of principal.

(2) If the prepayment amount equals or exceeds 3 full payments under the repayment schedule established for the loan, unless the borrower requests otherwise, the lender may apply the prepayment to future installments and advance the next payment due date, without the prior request of the borrower. If the lender does apply payments to future installments, it shall notify the borrower that the payments have been so applied, and remind the

borrower of the repayment obligation and the next scheduled payment due date.

(c) *Minimum annual payment.* (1)(i) Subject to paragraphs (c)(1) (ii) and (iii) of this section, during each year of the repayment period a borrower's total payments to all holders of the borrower's FFEL Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

(2) The provisions of paragraphs (c)(1) (i) and (ii) of this section may not result in an extension of the 10-year maximum repayment period unless forbearance, as described in § 682.211 or deferment described in § 682.210, has been approved.

(d) *Combined repayment of a borrower's student PLUS and SLS loans held by a lender.* (1) A lender may, at the request of a student borrower, combine the borrower's, student PLUS and SLS loans held by it into a single repayment schedule.

(2) The repayment period on the loans included in the combined repayment schedule must be calculated based on the beginning of repayment of the most recent included loan.

(3) The interest rate on the loans included in the new combined repayment schedule must be the weighted average of the rates of all included loans.

(e) *Refinancing a fixed-rate PLUS or SLS Program loan to secure a variable interest rate.* (1) Subject to paragraph (g) of this section, a lender may, at the request of a borrower, refinance a PLUS or SLS loan with a fixed interest rate in order to permit the borrower to obtain a variable interest rate.

(2) A loan made under paragraph (e)(1) of this section—

(i) Must bear interest at the variable rate described in § 682.202(a)(2)(iv); and

(ii) May not extend the repayment period provided for in paragraph (a)(7)(i) of this section.

(3) The lender may not charge an additional insurance premium on the loan, but may charge the borrower an administrative fee pursuant to § 682.202(e).

(f) *Refinancing of a fixed-rate PLUS or SLS Program loan to secure a variable interest rate by discharge of previous loan.* (1) Subject to paragraph (g) of this section, a borrower who has applied for, but been denied, a refinanced loan authorized under paragraph (e) of this section by the holder of the borrower's fixed-rate PLUS or SLS loan, may obtain a loan from another lender for the purpose of discharging the fixed-rate loan and obtaining a variable interest rate.

(2) A loan made under paragraph (f)(1) of this section—

(i) Must bear interest at the variable interest rate described in § 682.202(a)(2)(iv);

(ii) May not operate to extend the repayment period provided for in paragraph (a)(7)(i) of this section; and

(iii) Must be disbursed to the holder of the fixed-rate loan to discharge the borrower's obligation thereon.

(3) Upon receipt of the proceeds of a loan made under paragraph (f)(1) of this section, the holder of the fixed-rate loan shall, within five business days, apply the proceeds to discharge the borrower's obligation on the fixed-rate loan, and provide the refinancing lender with either a copy of the borrower's original promissory note evidencing the fixed-rate loan or the holder's written certification that the borrower's obligation on the fixed-rate loan has been fully discharged.

(4) The refinancing lender may charge the borrower an insurance premium on a loan made under paragraph (f)(1) of this section, but may not charge a fee to cover administrative costs.

(5) For purposes of deferments under § 682.210, the refinancing loan—

(i) Is considered a PLUS loan if any of the included loans is a PLUS loan made to a parent;

(ii) Is considered an SLS loan if the combined loan does not include a PLUS loan made to a parent; or

(iii) Is considered a loan to a "new borrower" as defined in § 682.210(b)(7), if all the loans that were refinanced were made on or after July 1, 1987, for a period of enrollment beginning on or after that date.

(g) *Conditions for refinancing certain loans.* (1) A lender may not refinance a loan under paragraphs (e) or (f) of this section if that loan is in default, involves a violation of a condition of reinsurance described in § 682.406, or, in the case of a Federal SLS or PLUS loan, is uninsured by the Secretary.

(2)(i) Prior to refinancing a fixed-rate loan under paragraph (f) of this section, the lender shall obtain a written statement from the holder of the loan certifying that—

(A) The holder has refused to refinance the fixed-rate loan under paragraph (e) of this section; and

(B) The fixed-rate loan is eligible for insurance or reinsurance under paragraph (g)(1) of this section.

(ii) The holder of the fixed-rate loan shall, within 10 business days of receiving a lender's written request to provide a certification under paragraph (g)(2)(i) of this section, provide the lender with that certification, or provide the lender and the guarantor on the loan with a written explanation of the reasons for its inability to provide the certification to the requesting lender.

(iii) The refinancing lender may rely in good faith on the certification provided by the holder of the fixed-rate loan under paragraph (g)(2)(ii) of this section.

(h) *Consolidation loans.* (1) For a Consolidation loan, the repayment period begins on the day of disbursement, with the first payment due within 60 days after the date of disbursement.

(2) If the sum of the amount of the Consolidation loan and the unpaid balance on other student loans to the applicant—

(i) Is equal to or greater than $7,500 but less than $10,000, the borrower shall repay the Consolidation loan in not more than 12 years;

(ii) Is equal to or greater than $10,000 but less than $20,000, the borrower shall repay the Consolidation loan in not more than 15 years;

(iii) Is equal to or greater than $20,000 but less than $40,000, the borrower shall repay the Consolidation loan in not more than 20 years;

(iv) Is equal to or greater than $40,000 but less than $60,000, the borrower shall repay the Consolidation loan in not more than 25 years; or

(v) Is equal to or greater than $60,000, the borrower shall repay the Consolidation loan in not more than 30 years.

(3) In order to qualify for a repayment period under paragraph (h)(2)(ii) of this section, the Consolidation loan must include at least $5,000 in Title IV Part B loans.

(4) For the purpose of paragraph (h)(2) of this section the unpaid balance on other student loans—

(i) May not exceed the amount of the Consolidation loan; and

(ii) Does not include the unpaid balance on any loan on which the borrower is in default, unless the borrower has made satisfactory arrangements with the holder to repay that loan.

(iii) May include loans received prior to the date of the Consolidation loan provided that the loans are included within 180 days after the Consolidation loan is made.

(5) A repayment schedule for a Consolidation loan—

(i) Must be established by the lender;

(ii) Must provide for graduated or income-sensitive repayment; and

(iii) Must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(6) Upon receipt of the proceeds of a loan made under paragraph (h)(2) of this section, the holder of the underlying loan shall promptly apply the proceeds to discharge fully the borrower's obligation on the underlying loan, and provide the consolidating lender with the holder's written certification that the borrower's obligation on the underlying loan has been fully discharged.

(i) *Treatment by a lender of borrowers' refunds received from schools.* (1) A lender shall treat a payment of a borrower's refund of tuition or other institutional charges received by the lender from a school as a credit against the principal amount owed by the borrower on the borrower's loan.

(2)(i) If a lender receives a refund payment from a school on a loan that is no longer held by that lender, or that has been discharged by another lender by refinancing under § 682.209(f) or by a Consolidation loan, the lender shall transmit the amount of the refund payment, within 30 days of its receipt, to the lender to whom it assigned the loan, or to the lender that discharged the prior loan, with an explanation of the source of the payment.

(ii) Upon receipt of a refund transmitted under paragraph (i)(2)(i) of this section, the holder of the loan promptly shall provide written notice to the borrower that the holder has received the refund.

(j) *Certification on loans to be repaid through consolidation.* Within 10 business days after receiving a written request for a certification from a lender under § 682.206(f), a holder shall either provide the requesting lender the certification or, if it is unable to certify to the matters described in that paragraph, provide the requesting lender and the guarantor on the loan at issue with a written explanation of the reasons for its inability to provide the certification.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1085)

§ 682.210 Deferment.

(a) *General.* (1) A borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period, pursuant to paragraph (b) of this section.

(2) (i) For a loan made before October 1, 1981, the borrower is also entitled to have periodic installments of principal deferred during the six-month period (post-deferment grace period) that begins after the completion of each deferment period or combination of those periods, except as provided in paragraph (a)(2)(ii) of this section.

(ii) Once a borrower receives a post-deferment grace period following an unemployment deferment, as described in paragraph (b)(1)(v) of this section, the borrower does not qualify for additional post-deferment grace periods following subsequent unemployment deferments.

(3) Interest accrues and is paid by the borrower during the deferment period and the post-deferment grace period, if applicable, unless interest accrues and is paid by the Secretary if—

(i) in the case of a Stafford loan, the loan was determined to be eligible for interest benefits under § 682.301 when the loan was made; or

(ii) in the case of a Consolidation loan, during any period the borrower was eligible for a deferment under section 428(b)(1)(m).

(4) As a condition for receiving a deferment, the borrower shall request the deferment, and provide the lender with all information and documents required to establish eligibility for a specific type of deferment.

(5) An authorized deferment period begins on the date the condition entitling the borrower to the deferment first exists, but not more than six months before the date the lender receives a request and the information and documentation required for the deferment.

(6) An authorized deferment period ends on the earlier of—

(i) The date when the condition establishing the borrower's eligibility for the deferment ends;

(ii) Except as provided in paragraph (a)(6)(iv) of this section, the date on which, as certified by an authorized official, the borrower's eligibility for the deferment is expected to end;

(iii) Except as provided in paragraph (a)(6)(iv) of this section, the expiration date of the period covered by any certification required by this section to be obtained for the deferment;

(iv) In the case of a student deferment for a Stafford or PLUS loan made to a borrower guaranteed by a guaranty agency whose student status confirmation report system includes student status reports for each borrower with a student deferment, and in the case of an SLS loan made to a borrower for a period of enrollment that commences at the same time as the deferment, the student's anticipated graduation date as indicated on the loan application, and as updated by notice to the lender from the school or guaranty agency; or

(v) The date when the condition providing the basis for the borrower's eligibility for the deferment has continued to exist for the maximum amount of time allowed for that type of deferment.

(7) A lender may not deny a borrower a deferment to which the borrower is entitled, even though the borrower may be delinquent, but not in default, in making required installment payments. The 180- or 240-day period required to establish default does not run during the deferment and post-deferment grace periods. Unless the lender has granted the borrower forbearance under § 682.211, when the deferment and, if applicable, the post-deferment grace period expire, a borrower resumes any delinquency status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment as to that loan, unless the borrower has made satisfactory repayment arrangements with the holder of the loan.

(9) The borrower promptly must inform the lender when the condition entitling the borrower to a deferment no longer exists.

(10) Authorized deferments are described in paragraph (b) of this section. Specific requirements for each deferment are set forth in paragraphs (c) through (r) of this section.

(b) *Authorized deferments.* (1) Deferment is authorized for a FFEL borrower during any period when the borrower is—

(i) Except as provided in paragraph (c)(4) of this section, engaged in full-time study at a school, or at a school that is operated by the Federal Government (e.g., the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State;

(ii) Engaged in a course of study under an eligible graduate fellowship program;

(iii) Engaged in a rehabilitation training program for disabled individuals;

(iv) Temporarily totally disabled, or unable to secure employment because the borrower is caring for a spouse or other dependent who is disabled and requires continuous nursing or similar services for up to three years; or

(v) Conscientiously seeking, but unable to find, full-time employment in the United States, for up to two years.

(2) For a borrower of a Stafford or SLS loan, and for a parent borrower of a PLUS loan made before August 15, 1983, deferment is authorized during any period when the borrower is—

(i) On active duty status in the United States Armed Forces, or an officer in the Commissioned Corps of the United States Public Health Service, for up to

three years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(i) of this section);

(ii) A full-time volunteer under the Peace Corps Act, for up to three years;

(iii) A full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs), for up to three years;

(iv) A full-time volunteer for a tax-exempt organization, for up to three years; or

(v) Engaged in an internship of residency program, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(iii) of this section).

(3) For a borrower of a Stafford or SLS loan who has been enrolled on at least a half-time basis at an eligible institution during the six months preceding the beginning of this deferment, deferment is authorized during a period of up to six months during which the borrower is—

(i) (A) Pregnant;

(B) Caring for his or her newborn child; or

(C) Caring for a child immediately following the placement of the child with the borrower before or immediately following adoption; and

(ii) Not attending a school or gainfully employed.

(4) For a "new borrower," as defined in paragraph (b)(7) of this section, of a Stafford, SLS, or PLUS loan, deferment is authorized during periods when the borrower is engaged in at least half-time study at a school for a period of enrollment for which the borrower received a Stafford or SLS loan, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(5) For a new borrower, as defined in paragraph (b)(7) of this section, of a Stafford or SLS loan, deferment is authorized during any period when the borrower is—

(i) On active duty status in the National Oceanic and Atmospheric Administration Corps, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(i) of this section);

(ii) Up to three years of service as a full-time teacher in a public or non-profit private elementary or secondary school in a teacher shortage area designated by the Secretary under paragraph (q) of this section.

(iii) Engaged in an internship or residency program, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(v) of this section); or

(iv) A mother who has preschool-age children (i.e., children who have not enrolled in first grade) and who is earning not more than $1 per hour above the Federal minimum wage, for up to 12 months of employment, and who began that full-time employment within one year of entering or re-entering the work force. Full-time employment involves at least 30 hours of work a week and it expected to last at least 3 months.

(6) For a parent borrower of a PLUS loan, deferment is authorized during any period when the student on whose behalf the parent borrower received the loan—

(i) Is not independent as defined in section 480(d) of the Act; and

(ii) Meets the conditions and provides the required documentation, for any of the deferments described in paragraphs (b)(1)(i)–(iii) and (b)(4) of this section.

(7) For purposes of this section, a "new borrower" with respect to a loan is a borrower who, on the date he or she signs the promissory note, has no outstanding balance on—

(i) A Stafford, SLS, or PLUS loan made prior to July 1, 1987 for a period of enrollment beginning prior to July 1, 1987; or

(ii) A Consolidation loan that repaid a loan made prior to July 1, 1987 and for a period of enrollment beginning prior to July 1, 1987.

(c) *Student deferment.* (1) Except as provided in paragraph (c)(4) of this section, to document eligibility for a deferment for full-time study or half-time study at a school, the borrower shall provide the lender with—

(i) A completed deferment application or certified loan application; and

(ii) A statement, which may be on the deferment application or a loan application, completed by an authorized official of the school certifying that the borrower is enrolled on a full-time basis, or, in the case of a deferment described in paragraph (b)(4) of this section, on at least a half-time basis; and

(iii) In the case of a deferment described in paragraph (b)(4) of this section for a borrower who is at least half-time but less than full-time, a statement from the financial aid administrator of the school or other documentation evidencing that the borrower has received, or will receive, a Stafford or SLS loan for the period of enrollment for which the deferment is sought.

(2) The lender shall consider a deferment granted on the basis of a certified loan application to cover the period lasting until the anticipated graduation date appearing on the application, unless and until it receives notice that the borrower has ceased the level of study (i.e., full-time or half-time) required for the deferment.

(3) In the case of an SLS or PLUS borrower, the lender shall treat the certified loan application as sufficient documentation for a student deferment for any outstanding SLS or PLUS loan previously made to the borrower that is held by the lender.

(4) A borrower serving in a medical internship residency program, except for an internship in dentistry, is prohibited from receiving or continuing deferment on a Stafford or SLS loan under paragraph (c) of this section.

(d) *Graduate fellowship deferment.* (1) To qualify for a deferment for study in a graduate fellowship program, a borrower shall provide the lender with a statement from an authorized official of the borrower's fellowship program certifying—

(i) That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) That the borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and

(iii) The borrower's anticipated completion date in the program.

(2) For purposes of paragraph (d)(1) of this section, an eligible graduate fellowship program is a fellowship program that—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(e) *Rehabilitation training program deferment.* (1) To qualify for a rehabilitation training program deferment, a borrower shall provide the lender with a statement from an authorized official of the borrower's rehabilitation training program certifying that the borrower is either receiving, or is scheduled to receive, services under an eligible rehabilitation training program for disabled individuals.

(2) For purposes of paragraph (e)(1) of this section, an eligible rehabilitation

training program for disabled individuals is a program that—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services program;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that normally would prevent an individual from engaging in full-time employment, either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(f) *Temporary total disability deferment.* (1) To qualify for a temporary total disability deferment, a borrower shall provide the lender with a statement from a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower is temporarily totally disabled as defined in § 682.200(b).

(2) A borrower is not considered temporarily totally disabled on the basis of a condition that existed before he or she applied for the loan, unless the condition has substantially deteriorated so as to render the borrower temporarily totally disabled, as substantiated by the statement required under paragraph (f)(1) of this section, after the borrower submitted the loan application.

(3) A lender may not grant a deferment based on a single certification under paragraph (f)(1) of this section beyond the date that is six months after the date of certification.

(g) *Dependent's disability deferment.* (1) To qualify for a deferment given to a borrower whose spouse or other dependent requires continuous nursing or similar services for a period of at least 90 days, the borrower shall provide the lender with a statement—

(i) From a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower's spouse or dependent requires continuous nursing or similar services for a period of at least 90 days; and

(ii) From the borrower, certifying that the borrower is unable to secure full-time employment because he or she is providing continuous nursing or similar services to the borrower's spouse or other dependent. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(2) A lender may not grant a deferment based on a single certification under paragraph (g)(1) of this section beyond the date that is six months after the date of the certification.

(h) *Unemployment deferment.* (1) To qualify for an unemployment deferment, a borrower shall provide the lender with a written certification—

(i) Describing the borrower's conscientious search for full-time employment during the preceding six months, except in the case of the initial period of unemployment, including, for each of at least six attempts to secure employment to support the period covered by the certification—

(A) The name of the employer contacted;

(B) The employer's address and phone number;

(C) The name or title of the person contacted; and

(ii) Setting forth the borrower's latest permanent home address and, if applicable, the borrower's latest temporary address; and

(iii) Affirming that the borrower has registered with a public or private employment agency, if one is within a 50-mile radius of the borrower's permanent or temporary address, specifying the agency's name and address and the date of registration.

(2) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(3) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels over qualified by virtue of education or previous experience.

(4) For the purpose of this paragraph, full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(5) A lender may not grant a deferment based on a single certification under paragraph (h)(1) of this section beyond the date that is six months after the date of the certification.

(6) A lender may accept, as an alternative to the certification of employer contacts required under paragraph (h)(1)(ii) of this section, comparable documentation the borrower has used to meet the requirements of the Unemployment Insurance Service, provided it shows the same number of contacts and contains the same information the borrower would be required to provide under the Department's regulations.

(i) *Military deferment.* (1) To qualify for a military deferment, a borrower shall provide the lender with—

(i) A written statement from the borrower's commanding or personnel officer certifying—

(A) That the borrower is on active duty in the Armed Forces of the United States;

(B) The date on which the borrower's service began; and

(C) The date on which the borrower's service is expected to end; or

(ii)(A) A copy of the borrower's official military orders; and

(B) A copy of the borrower's military identification.

(2) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

(3) A borrower enlisted in a reserve component of the Armed Forces may qualify for a military deferment only for service on a full-time basis that is expected to last for a period of at least one year in length, as evidenced by official military orders, unless an order for national mobilization of reservists is issued.

(4) A borrower enlisted in the National Guard qualifies for a military deferment only while the borrower is on active duty status as a member of the U.S. Army or Air Force Reserves, and meets the requirements of paragraph (i)(3) of this section.

(j) *Public Health Service deferment.* To qualify for a Public Health Service deferment, the borrower shall provide the lender with a statement from an authorized official of the United States Public Health Service (USPHS) certifying—

(1) That the borrower is engaged in full-time service as an officer in the Commissioned Corps of the USPHS;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(k) *Peace Corps deferment.* To qualify for a deferment for service under the

Peace Corps Act, the borrower shall provide the lender with a statement from an authorized official of the Peace Corps certifying—

(1) That the borrower has agreed to serve for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(l) *Full-time volunteer service in the ACTION programs.* To qualify for a deferment as a full-time paid volunteer in an ACTION program, the borrower shall provide the lender with a statement from an authorized official of the program certifying—

(1) That the borrower has agreed to serve for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(m) *Deferment for full-time volunteer service for a tax-exempt organization.* To qualify for a deferment as a full-time paid volunteer for a tax-exempt organization, a borrower shall provide the lender with a statement from an authorized official of the volunteer program certifying—

(1) That the borrower—

(i) Serves in an organization that has obtained an exemption from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(iii) Does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization;

(iv) Does not, as part of his or her duties, give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities; and

(v) Has agreed to serve on a full-time basis for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(n) *Internship or residency deferment.* (1) To qualify for an internship or residency deferment under paragraphs (b)(2)(v) or (b)(5)(iii) of this section, the borrower shall provide the lender with a statement from an authorized official of the organization with which the borrower is undertaking the internship or residency program certifying—

(i) That the internship or residency program is a supervised training program that requires the borrower to hold at least a baccalaureate degree prior to acceptance into the program;

(ii) That, except for a borrower that provides the statement from a State official described in paragraph (n)(2) of this section, the internship or residency program leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(iii) That the borrower has been accepted into the internship or residency program; and

(iv) The anticipated dates on which the borrower will begin and complete the internship or residency program, or, in the case of a borrower providing the statement described in paragraph (n)(2) of this section, the anticipated date on which the borrower will begin and complete the minimum period of participation in the internship program that the State requires be completed before an individual may be certified for professional practice or service.

(2) For a borrower who does not provide a statement certifying to the matters set forth in paragraph (n)(1)(ii) of this section to qualify for an internship deferment under paragraph (b)(2)(v) of this section, the borrower shall provide the lender with a statement from an official of the appropriate State licensing agency certifying that the internship or residency program, or a portion thereof, is required to be completed before the borrower may be certified for professional practice or service.

(o) *Parental-leave deferment.* (1) To qualify for the parental-leave deferment described in paragraph (b)(3) of this section, the borrower shall provide the lender with—

(i) A statement from an authorized official of a participating school certifying that the borrower was enrolled on at least a half-time basis during the six months preceding the beginning of the deferment period;

(ii) A statement from the borrower certifying that the borrower—

(A) Is pregnant, caring for his or her newborn child, or caring for a child immediately following the placement of the child with the borrower in connection with an adoption;

(B) Is not, and will not be, attending school during the deferment period; and

(C) Is not, and will not be, engaged in full-time employment during the deferment period; and

(iii) A physician's statement demonstrating the existence of the pregnancy, a birth certificate, or a statement from the adoption agency official evidencing a pre-adoption placement.

(2) For purposes of paragraph (o)(1)(ii)(C) of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(p) *NOAA deferment.* To qualify for a National Oceanic and Atmospheric Administration (NOAA) deferment, the borrower shall provide the lender with a statement from an authorized official of the NOAA corps, certifying—

(1) That the borrower is on active duty service in the NOAA corps;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(q) *Targeted teacher deferment.* (1) To qualify for a targeted teacher deferment under paragraph (b)(5)(ii) of this section, the borrower, for each school year of service for which a deferment is requested, must provide to the lender—

(i) A statement by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the borrower is teaching, certifying that the borrower is employed as a full-time teacher; and

(ii) A certification that he or she is teaching in a teacher shortage area designated by the Secretary as provided in paragraphs (q) (5) through (7) of this section, as described in paragraph (q)(2) of this section.

(2) In order to satisfy the requirement for certification that a borrower is teaching in a teacher shortage area designated by the Secretary, a borrower must do one of the following:

(i) If the borrower is teaching in a State in which the Chief State School Officer has complied with paragraph (q)(3) of this section and provides an annual listing of designated teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower may obtain a certification that he or she is teaching in a teacher shortage area from his or her school's chief administrative officer.

(ii) If a borrower is teaching in a State in which the Chief State School Officer has not complied with paragraph (q)(3) of this section or does not provide an annual listing of designated teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower must obtain certification that he or she is teaching in a teacher shortage area from the Chief

State School Officer for the State in which the borrower is teaching.

(3) In the case of a State in which borrowers wish to obtain certifications as provided for in paragraph (q)(2)(i) of this section, the State's Chief State School Officer must first have notified the Secretary, by means of a one-time written assurance, that he or she provides annually to the State's chief administrative officers whose schools are affected by the Secretary's designations and the guaranty agency for that State, a listing of the teacher shortage areas designated by the Secretary as provided for in paragraphs (q) (5) through (7) of this section.

(4) If a borrower who receives a deferment continues to teach in the same teacher shortage area as that in which he or she was teaching when the deferment was originally granted, the borrower shall, at the borrower's request, continue to receive the deferment for those subsequent years, up to the three-year maximum deferment period, even if his or her position does not continue to be within an area designated by the Secretary as a teacher shortage area in those subsequent years. To continue to receive the deferment in a subsequent year under this paragraph, the borrower shall provide the lender with a statement by the chief administrative officer of the public or nonprofit private elementary or secondary school that employs the borrower, certifying that the borrower continues to be employed as a full-time teacher in the same teacher shortage area for which the deferment was received for the previous year.

(5) For purposes of this section a teacher shortage area is—

(i)(A) A geographic region of the State in which there is a shortage of elementary or secondary school teachers; or

(B) A specific grade level or academic, instructional, subject-matter, or discipline classification in which there is a statewide shortage of elementary or secondary school teachers; and

(ii) Designated by the Secretary under paragraphs (q)(6) or (q)(7) of this section.

(6)(i) In order for the Secretary to designate one or more teacher shortage areas in a State for a school year, the Chief State School Officer shall by January 1 of the calendar year in which the school year begins, and in accordance with objective written standards, propose teacher shortage areas to the Secretary for designation. With respect to private nonprofit schools included in the recommendation, the Chief State School Officer shall consult with appropriate officials of the private nonprofit schools in the State prior to submitting the recommendation.

(ii) In identifying teacher shortage areas to propose for designation under paragraph (q)(6)(i) of this section, the Chief State School Officer shall consider data from the school year in which the recommendation is to be made, unless that data is not yet available, in which case he or she may use data from the immediately preceding school year, with respect to—

(A) Teaching positions that are unfilled;

(B) Teaching positions that are filled by teachers who are certified by irregular, provisional, temporary, or emergency certification; and

(C) Teaching positions that are filled by teachers who are certified, but who are teaching in academic subject areas other than their area of preparation.

(iii) If the total number of unduplicated full-time equivalent (FTE) elementary or secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation does not exceed 5 percent of the total number of FTE elementary and secondary teaching positions in the State, the Secretary designates those areas as teacher shortage areas.

(iv) If the total number of unduplicated FTE elementary and secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation exceeds 5 percent of the total number of elementary and secondary FTE teaching positions in the State, the Chief State School Officer shall submit, with the list of proposed areas, supporting documentation showing the methods used for identifying shortage areas, and an explanation of the reasons why the Secretary should nevertheless designate all of the proposed areas as teacher shortage areas. The explanation must include a ranking of the proposed shortage areas according to priority, to assist the Secretary in determining which areas should be designated. The Secretary, after considering the explanation, determines which shortage areas to designate as teacher shortage areas.

(7) A Chief State School Officer may submit to the Secretary for approval an alternative written procedure to the one described in paragraph (q)(6) of this section, for the Chief State School Officer to use to select the teacher shortage areas recommended to the Secretary for designation, and for the Secretary to use to choose the areas to be designated. If the Secretary approves the proposed alternative procedure, in writing, that procedure, once approved, may be used instead of the procedure described in paragraph (q)(6) of this section for designation of teacher shortage areas in that State.

(8) For purposes of paragraphs (q)(1) through (7) of this section—

(i) The definition of the term *school* in § 682.200(b) does not apply;

(ii) *Elementary school* means a day or residential school that provides elementary education, as determined under State law;

(iii) *Secondary school* means a day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term "secondary school" includes education beyond the twelfth grade;

(iv) *Teacher* means a professional who provides direct and personal services to students for their educational development through classroom teaching;

(v) *Chief State School Officer* means the highest ranking educational official for elementary and secondary education for the State;

(vi) *School year* means the period from July 1 of a calendar year through June 30 of the following calendar year;

(vii) *Teacher shortage area* means an area of specific grade, subject matter, or discipline classification, or a geographic area in which the Secretary determines that there is an inadequate supply of elementary or secondary school teachers; and

(viii) *Full-time equivalent* means the standard used by a State in defining full-time employment, but not less than 30 hours per week. For purposes of counting full-time equivalent teacher positions, a teacher working part of his or her total hours in a position that is designated as a teacher shortage area is counted on a *pro rata* basis corresponding to the percentage of his or her working hours spent in such a position.

(r) *Working-mother deferment.* (1) To qualify for the working-mother deferment described in paragraph (b)(5)(iv) of this section, the borrower shall provide the lender with a statement certifying that she—

(i) Is the mother of a preschool-age child;

(ii) Entered or reentered the workforce not more than one year before the beginning date of the period for which the deferment is being sought;

(iii) Is currently engaged in full-time employment; and

(iv) Does not receive compensation that exceeds $1 per hour above the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage).

(2) In addition to the certification required under paragraph (r)(1) of this section, the borrower shall provide to the lender documents demonstrating the age of her child (e.g., a birth certificate) and the rate of her compensation (e.g., a pay stub showing her hourly rate of pay).

(3) For purposes of this paragraph—

(i) A preschool-age child is one who has not yet enrolled in first grade or a higher grade in elementary school; and

(ii) Full-time employment involves at least 30 hours of work a week and is expected to last at least 3 months.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1085)

§ 682.211 Forbearance.

(a) (1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower or endorser in order to prevent the borrower or endorser from defaulting on the borrower's or endorser's repayment obligation, or to permit the borrower or endorser to resume honoring that obligation after default. *Forbearance* means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Subject to paragraph (h) of this section, a lender may grant forbearance of payments of principal and interest under paragraphs (b), (c), and (d) of this section only if—

(i) The lender reasonably believes, and documents in the borrower's file, that the borrower or endorser intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 682.210 and the Secretary does not pay interest benefits on behalf of the borrower under § 682.301.

(3) If two individuals are liable for repayment of a PLUS Program loan as co-makers, the lender may grant forbearance only if the ability of both individuals to make scheduled payments has been impaired.

(4) If payments of interest are forborne, they may be capitalized as provided in § 682.202(b).

(b) A lender may grant forbearance if the lender and the borrower or endorser agree in writing to the terms of the forbearance, or, in the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree in writing to the forbearance.

(d) A guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the repayment obligation after default. The terms of the forbearance agreement in this situation must include a new signed repayment obligation.

(e) Except in the case of forbearance of interest payments during a deferment period or a forbearance granted under paragraph (g) of this section, if a forbearance involves the postponement of all payments, the lender must contact the borrower or endorser by telephone or send a written notice to the borrower or endorser at least once every three months during the period of forbearance to remind the borrower or endorser of the outstanding obligation to repay.

(f) A lender may grant forbearance, upon notice to the borrower or if applicable, the endorser, with respect to payments of interest and principal that are overdue—

(1) For a properly granted period of deferment for which the lender learns the borrower did not qualify;

(2) Upon the beginning of an authorized deferment period;

(3) For the period beginning when the borrower entered repayment until the first payment due date was established;

(4) For a period as authorized by the Secretary in the event of a national military mobilization or other national emergency; or

(5) For the period prior to the borrower's filing of a bankruptcy petition as provided in § 682.402(d).

(g) Upon the written request of the borrower, a lender shall grant forbearance of principal and, unless otherwise indicated by the borrower, interest, in 12-month intervals to a borrower whose deferment received under § 682.210(n) has expired until the borrower has completed the internship or residency.

(h) In granting a forbearance under this section, a lender shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1080, 1082)

§ 682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(1) Secure funds for making loans; or

(2) Induce a lender to make loans to either the students or the parents of students of a particular school or particular category of students or their parents.

(b) The following are examples of transactions that, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

(1) Cash payments by or on behalf of a school made to a lender or other party.

(2) The maintaining of a compensating balance by or on behalf of a school with a lender.

(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by the Student Loan Marketing Association, an agency of any State functioning as a secondary market or in any other circumstances approved by the Secretary, notes, or any interest in notes, may not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the FFEL programs as collateral for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the most recently prescribed special allowance under § 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the loan seller a warranty that—

(1) Covers future reductions by the Secretary or a guaranty agency in

computing the amount of loss payable on default claims filed on the loans, if the reductions are attributable to an act, or failure to act, on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a FFEL loan shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than one year, or both.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1097)

§ 682.213 Prohibition against the use of the Rule of 78s.

For purposes of the calculations required by this part, a lender may not use the Rule of 78s to calculate the outstanding principle balance of a loan, except for a loan made to a borrower who entered repayment before June 26, 1987 and who was informed in the promissory note that interest on the loan would be calculated using the Rule of 78s. For those loans, the Rule of 78s must be used for the life of the loan.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.214 Compliance with equal credit opportunity requirements.

In making a Stafford loan on which interest benefits are to be paid, a lender shall comply with the equal credit opportunity requirements of Regulation B (12 CFR part 202). With regard to Regulation B, the Secretary considers the Stafford 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, under 12 CFR 202.8(d), the lender may request a loan applicant to disclose his or her marital status, income from alimony, child support, and separate maintenance income, and spouse's financial resources.

(Authority: 20 U.S.C. 1071–1087–2)

Subpart C—Federal Payments of Interest and Special Allowance

§ 682.300 Payment of interest benefits on Stafford loans.

(a) *General.* The Secretary pays a lender a portion of the interest on a Stafford loan on behalf of a borrower who qualifies under § 682.301. This payment is known as interest benefits.

(b) *Covered interest.* (1) The Secretary pays a lender the interest that accrues on an eligible Stafford loan—

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraph (b)(2) of this section;

(ii) During any period when the borrower has an authorized deferment, and, if applicable, a post-deferment grace period; and

(iii) During the repayment period for loans described in paragraph (d)(2) of this section.

(2) The Secretary's obligation to pay interest benefits on an otherwise eligible loan terminates on the earliest of—

(i) The date the borrower's loan is repaid;

(ii) The date the disbursement check that represents a portion of a loan is returned uncashed to the lender, or the 120th day after the date of that disbursement, if—

(A) The check for the disbursement has not been negotiated on or before that date; or

(B) The proceeds of the disbursement made by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date;

(iii) The date of default by the borrower;

(iv) The date the lender receives payment of a claim for loss on the loan;

(v) The date the borrower's loan is discharged in bankruptcy;

(vi) The date the lender determines that the borrower has died or has become totally and permanently disabled; or

(vii) The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor.

(3) Section 682.412 sets forth circumstances under which a lender may be required to repay interest benefits received on a loan guaranteed by a guaranty agency.

(c) *Interest not covered.* The Secretary does not pay—

(1) Interest for which the borrower is not otherwise liable; or

(2) Interest paid on behalf of the borrower by a guaranty agency.

(d) *Rate.* (1) Except as provided in paragraph (d)(2) of this section, the Secretary pays the lender at the actual interest rate on a loan provided that the actual interest rate does not exceed the applicable interest rate.

(2) For a loan disbursed prior to December 15, 1968, or subject to a binding commitment made prior to that date, the Secretary pays an amount during the repayment period equivalent to 3 percent per year of the unpaid principal amount of the loan.

(Authority: 20 U.S.C. 1078, 1082)

§ 682.301 Eligibility of borrowers for interest benefits on Stafford loans.

(a) *General.* (1) A borrower must demonstrate financial need in accordance with Part F of the Act to qualify for interest benefits on a Stafford loan.

(2) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(iii) (A) Directs the member to pursue the course of study; or

(B) Provides subsistence support to its members.

(b) *Application for interest benefits.* To apply for interest benefits, the student, or the school at the direction of the student, shall submit a loan application to the lender. The application must include a certification from the student's school of the following information:

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended.

(2) The estimated financial assistance for the student for the academic period for which the loan is intended.

(3) The student's expected family contribution, as determined pursuant to part F of the Act, under a need analysis system approved by the Secretary.

(4) The amount of the student's need for a loan, as determined pursuant to part F of the Act, under a need analysis system approved by the Secretary.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of an SLS, PLUS, nonsubsidized Stafford loan, State sponsored loan, or private loan program obtained for a period of enrollment to replace the expected family contribution determined under paragraph (b)(3) of this section for that period of enrollment.

(Authority: 20 U.S.C. 1078, 1082, 1087–1)

§ 682.302 Payment of special allowance on FFEL loans.

(a) *General.* The Secretary pays a special allowance to a lender on an eligible FFEL loan. The special

allowance is a percentage of the average unpaid principal balance of a loan, including capitalized interest, computed in accordance with paragraph (c) of this section.

(b) *Eligible loans.* (1) Except for nonsubsidized Stafford loans disbursed on or after October 1, 1981, or as provided in paragraphs (b)(2) or (e) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the SLS or PLUS Program on or after July 1, 1987 or under § 682.209 (e) or (f), no special allowance is paid for any period for which the interest rate determined under § 682.202(a)(2)(iv)(A) for that loan does not exceed 12 percent.

(c) *Rate.* (1) Except as provided in paragraph (c)(2) of this section, the special allowance rate for an eligible loan during a 3-month period is calculated by—

(i) Determining the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the 3-month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A) 3.25 percent to the resulting percentage, for a loan made on or after November 16, 1986;

(B) 3.25 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(C) 3.5 percent to the resulting percentage, for a loan made prior to October 17, 1986, or for a loan described in paragraph (c)(2) of this section; or

(D) 3.5 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

(iv) Rounding the result upward to the nearest one-eighth of 1 percent, for a loan made prior to October 1, 1981; and

(v) Dividing the resulting percentage by 4.

(2) The special allowance rate determined under paragraph (c)(1)(iii)(C) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the—

(i) Maine Educational Loan Marketing Corporation to the Student Loan Marketing Association pursuant to an agreement entered into on January 31, 1984; or

(ii) South Carolina Student Loan Corporation to the South Carolina National Bank pursuant to an agreement entered into on July 30, 1986.

(3)(i) Subject to paragraph (c)(3)(ii) of this section, the special allowance rate is one-half the rate calculated under paragraph (c)(1)(iii)(C) of this section for a loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained by the holder from—

(A) The issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1986;

(B) Collections or payments by a guarantor on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(C) Interest benefits or special allowance payments on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(D) The sale of a loan that was made or purchased with funds obtained by the holders from obligations described in paragraph (c)(3)(i)(A) of this section; or

(E) The investment of the proceeds of obligations described in paragraph (c)(3)(i)(A) of this section.

(ii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section may not be less than—

(A) 2.5 percent per year on eligible loans for which the applicable interest rate is 7 percent;

(B) 1.5 percent per year on eligible loans for which the applicable interest rate is 8 percent; or

(C) One-half of 1 percent per year on eligible loans for which the applicable rate is 9 percent.

(d) *Termination of special allowance payments on a loan.* (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of—

(i) The date a borrower's loan is repaid;

(ii) The date a borrower's loan check is returned uncashed to the lender;

(iii) The date a lender receives payment on a claim for loss on the loan;

(iv) The date a loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(v) The 60th day after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to the 60th day;

(vi) The 120th day after the date of disbursement, if—

(A) The loan check has not been negotiated on or before that date; or

(B) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date; or

(vii) The 30th day after the date the guaranty agency returns a claim for loss on the loan to the lender due solely to inadequate documentation unless the lender files a claim for loss on the loan with the guarantor, together with all required documentation, prior to the 30th day.

(2) Section 682.413 sets forth the circumstances under which a lender may be required to repay the special allowance received on a loan guaranteed by a guaranty agency.

(e) *Special allowance payments for loans financed by proceeds of tax-exempt obligations.* (1) The Secretary pays a special allowance on a loan described in paragraph (c)(3)(i) of this section that is held by or on behalf of an Authority only if the loan meets the requirements of § 682.800.

(2) The Secretary pays a special allowance to an Authority at the rate prescribed in paragraph (c)(1) of this section on a loan described in paragraph (c)(3)(i) of this section—

(i) After the loan is pledged or otherwise transferred in consideration of funds derived from sources other than those described in paragraph (c)(3)(i) of this section; and

(ii) If the authority retains a legal or equitable interest in the loan—

(A) The prior tax-exempt obligation is retired; or

(B) The prior tax-exempt obligation is defeased by means of obligations that the Authority certifies in writing to the Secretary bear a yield that does not exceed the yield permitted under Internal Revenue Service regulations, 26 CFR 1.103–14, with regard to investments of proceeds of a tax-exempt refunding obligation.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

§ 682.303 [Reserved]

§ 682.304 Methods for computing interest benefit and special allowance.

(a) *General.* The Secretary pays a lender interest benefits and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on a lender's loans. A lender shall use the average daily balance method to determine the

balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) *Average daily balance method for interest benefits.* (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, divides the sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The Secretary computes the interest benefits due on all qualified loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by the actual number of days in the year.

(c) *Actual accrual method for interest benefits.* (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by the actual number of days in the year, or, alternatively, 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(2) The interest benefits due for a quarter equal the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) *Average daily balance method for special allowance.* (1) To compute the average daily balance outstanding for purposes of special allowance, the lender adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter for qualifying loans at each applicable interest rate.

(2) The Secretary computes the special allowance payable to a lender based upon the average daily balance computed by the lender under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1082, 1087–1)

§ 682.305 Procedures for payment of interest benefits and special allowance.

(a) *General.* (1) To receive payments of interest benefits and special allowance, a lender must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary.

(2) The lender shall report, on the quarterly report required by paragraph (a)(1) of this section, the amount of origination fees it was authorized to collect and the amount of those fees refunded to borrowers during the quarter covered by the report.

(3) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by the amount of origination fees the lender was authorized to collect during the quarter under § 682.202(c), whether or not the lender actually collected that amount. The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of origination fees refunded to borrowers during the quarter under § 682.202(c).

(4)(i) If a lender sells or otherwise transfers a loan within the calendar quarter in which the loan is disbursed, either the lender making the loan or the new holder may report the amount of the origination fee to the Secretary.

(ii) A lender that makes a loan and any subsequent holder of the loan are jointly and severally liable for payment of the origination fee on the loan to the Secretary.

(b) *Penalty interest.* (1)(i) If the Secretary does not pay interest benefits or the special allowance within 30 days after the Secretary receives an accurate, timely, and complete request for payment from a lender, the Secretary pays the lender penalty interest.

(ii) The payment of interest benefits or special allowance is deemed to occur, for purposes of this paragraph, when the Secretary—

(A) Authorizes the Treasury Department to pay the lender;

(B) Credits the payment due the lender against a debt that the Secretary determines is owed the Secretary by the lender; or

(C) Authorizes the Treasury Department to pay the amount due by the lender to another Federal agency for credit against a debt that the Federal agency has determined the lender owes.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed by—

(i) Multiplying the daily interest rate applicable to loans on which payment for interest benefits was requested, by the amount of interest benefits due on those loans for each interest rate;

(ii) Multiplying the daily special allowance rate applicable to loans on which special allowance was requested by the amount of special allowance due on those loans for each interest rate and special allowance category;

(iii) Adding the results of paragraphs (b)(2)(i) and (ii) of this section to determine the gross penalty interest to be paid for each day that penalty interest is due;

(iv) Dividing the results of paragraph (b)(2)(iii) of this section by the gross amount of interest benefits and special allowance due to obtain the average penalty interest rate;

(v) Multiplying the rate obtained in paragraph (b)(2)(iv) of this section by the total amount of reduction to gross interest benefits and special allowance due (e.g., origination fees or other debts owed to the Federal government);

(vi) Subtracting the amount calculated in paragraph (b)(2)(v) of this section from the amount calculated under paragraph (b)(2)(iii) of this section to obtain the net amount of penalty interest due per day; and

(vii) Multiplying the amount calculated in paragraph (b)(2)(vi) of this section by the number of days calculated under paragraph (b)(3) of this section.

(3) The Secretary pays penalty interest for the period—

(i) Beginning on the later of—

(A) The 31st day after the final day of the quarter covered by the request for payment; or

(B) The 31st day after the Secretary's receipt of an accurate, timely, and complete request for payment from the lender; and

(ii) Ending on the day the Secretary pays the interest benefits and the special allowance at issue, in accordance with paragraph (b)(1)(ii) of this section.

(4) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(5) A request for interest benefits and special allowance is not considered accurate and complete if it—

(i) Requests payments to which the lender is not entitled under § 682.300 through § 682.302;

(ii) Includes loans that the Secretary, in writing, has directed that the lender exclude from the request;

(iii) Does not contain all information required by the Secretary or contains conflicting information; or

(iv) Is not provided and certified on the form and in the manner prescribed by the Secretary.

(c) *Independent audits.* (1) A lender shall arrange for an independent annual compliance audit conducted by a qualified independent organization or person.

(2) The audit required under paragraph (c)(1) of this section must—

(i) Examine the lender's compliance with the Act and applicable regulations;

(ii) Examine the lender's financial management of its FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO's) *Government Auditing Standards*. Procedures for audits are contained in an audit guide developed by and available from the Office of the Inspector General of the Department;

(iv) Be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be of the lender's first fiscal year that begins after July 23, 1992, and must be submitted within six months of the end of the audit period. Each subsequent audit must cover the lender's activities for the period beginning no later than the end of the period covered by the preceding audit;

(v) With regard to a lender that is a governmental entity, the audit required by this paragraph must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G; and

(vi) With regard to a lender that is a nonprofit organization, the audit required by this paragraph must be conducted in accordance with OMB Circular A–133, Audit of Institutions of Higher Education and Other Nonprofit Institutions, as incorporated in 34 CFR 74.61(h)(3). If a nonprofit lender meets the criteria in Circular A–133 for choosing the option for a program-specific audit, and so chooses, the program-specific audit must meet the requirements in paragraphs (c)(1) through (c)(2)(iv) of this section.

(vii) The Secretary may determine that a lender has met the requirements of paragraph (c) of this section if the lender has been audited in accordance with 31 U.S.C. 7502 for other purposes, the lender submits the results of the audit to the Office of Inspector General, and the Secretary determines that the audit meets the requirements of this paragraph.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

Subpart D—Administration of the Federal Family Education Loan Programs by a Guaranty Agency

§ 682.400 Agreements between a guaranty agency and the Secretary.

(a) The Secretary enters into agreements with a guaranty agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guaranty agency to participate in the GSL programs and to receive the various payments and benefits related to that participation.

(b) There are three agreements:

(1) *Basic program agreement.* In order to participate in the FFEL programs, a guaranty agency must have a basic program agreement. Under this agreement—

(i) Borrowers whose Stafford loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders under the guaranty agency program may receive special allowance payments from the Secretary and have death, disability, and bankruptcy claims paid by the Secretary through the guaranty agency; and

(iii) The guaranty agency may apply for the administrative cost allowance and for the other agreements described in this section.

(2) *Federal advances for claim payments agreement.* A guaranty agency must have an agreement for Federal advances for claim payments to receive and use Federal advances to pay default claims.

(3) *Reinsurance agreement.* A guaranty agency must have a reinsurance agreement to receive reimbursement from the Secretary for its losses on default claims.

(c) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(d) All of the agreements are subject to subsequent changes in the Act, in other applicable Federal statutes, and in regulations that apply to the FFEL programs.

(Authority: 20 U.S.C. 1072, 1078–1, 1078–2, 1078–3, 1082, 1087, 1087–1)

§ 682.401 Basic program agreement.

(a) *General.* In order to participate in the FFEL programs, a guaranty agency shall enter into a basic agreement with the Secretary.

(b) *Terms of agreement.* In the basic agreement, the guaranty agency shall agree to ensure that its loan guarantee program meets the following requirements at all times:

(1) *Aggregate loan limits.* The aggregate guaranteed unpaid principal amount for all Stafford, SLS, and PLUS loans made to a borrower may not exceed the amounts set forth in § 682.204(b), (d), and (f).

(2) *Annual loan limits.* (i) The annual loan maximum amount for a borrower that may be guaranteed for an academic year may not exceed the amounts set forth in § 682.204(a), (c), and (e).

(ii) A guaranty agency may make the loan amounts authorized under paragraph (b)(2)(i) of this section applicable for either—

(A) A period of not less than seven nor more than 12 months; or

(B) A period of not less than seven months in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore) or, in the case of schools using clock hours, completion of at least 900 clock hours.

(iii) The amount of a loan guaranteed may not exceed the amount set forth in § 682.204(h).

(3) *Duration of borrower eligibility.* (i) A student borrower under the Stafford Loan Program or the SLS Program and a parent borrower under the PLUS Program are eligible to receive a guaranteed loan for any year of the student's study at a participating school.

(ii) Loans must be available to or on behalf of any student for at least six academic years of study.

(4) *Borrower responsibilities.* (i) The borrower shall indicate his or her preferred lender on the loan application, if he or she has such a preference.

(ii) The borrower shall give the lender, as part of the application process for a Stafford, SLS, or PLUS loan—

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) Information demonstrating that the borrower is eligible for the loan;

(C) Information concerning the outstanding FFEL loans of the borrower and, for a parent borrower, of the student, including any Consolidation loan used to discharge a Stafford, SLS, or PLUS loan;

(D) A statement of the sources and amount of the student's estimated financial assistance, as defined in § 682.200, for the period of enrollment for which the loan is intended;

(E) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(F) Information from the school demonstrating that the student qualifies as an eligible student and providing the maximum amount that may be borrowed by or on behalf of the student.

(iii) The borrower shall give the lender, as part of the application process for a Consolidation loan—

(A) Information demonstrating that the borrower is eligible for the loan under § 682.201(c); and

(B) A statement that the borrower does not currently have another application for a Consolidation loan pending.

(iv) The borrower shall promptly notify—

(A) The current holder or the guaranty agency of any change of name, address, student status to less than half-time, employer, or employer's address; and

(B) The school of any change in local address during enrollment.

(5) *School eligibility.* A school that has a program participation agreement in place with the Secretary under § 682.600 is eligible to participate in the program of the agency except to the extent that—

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR part 668 or by the guaranty agency under standards and procedures that are substantially the same as those in 34 CFR part 668;

(ii) The school is disqualified by the Secretary under section 432(h)(3) of the Act or § 682.713;

(iii) The school is ineligible under section 435(a)(3) of the Act;

(iv) There is a State constitutional prohibition affecting the school's eligibility;

(v) The school's programs consist of study solely by correspondence; or

(vi) The agency determines that the school does not satisfy the standards of administrative capability and financial responsibility as defined in 34 CFR part 668.

(6) *Lender eligibility.* (i) An eligible lender may participate in the program of the agency under reasonable criteria established by the guaranty agency except to the extent that—

(A) The lender's eligibility has been limited, suspended, or terminated by the Secretary under subpart G of this part or by the agency under standards and procedures that are substantially the same as those in subpart G of this part; or

(B) The lender is disqualified by the Secretary under sections 432(h)(1), 432(h)(2), 435(d)(3), or 435(d)(5) of the Act or § 682.712; or

(C) There is a State constitutional prohibition affecting the lender's eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographical area that the agency serves.

(iii) The guaranty agency may refuse to guarantee loans made by a school on behalf of students not attending that school.

(iv) The guaranty agency may, in determining whether to enter into a guarantee agreement with a lender, consider whether the lender has had prior experience in a similar Federal, State, or private nonprofit student loan program and the amount and percentage of loans that are currently delinquent or in default under that program.

(7) *Out-of-State schools.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are legal residents of any State served by the agency under § 682.404(i)(2) but who attend schools out of that State and for parents who are legal residents of that State and are borrowing on behalf of students attending schools out of that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(8) *Out-of-State residents.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are not legal residents of any State served by the agency under § 682.404(i)(2) but who attend schools in that State, and for parents who are not legal residents of that State and who are borrowing on behalf of students attending schools in that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal residents of the State and who are borrowing for students attending in-State schools.

(9) *Insurance premiums.* (i) Except for a SLS or PLUS loan refinanced under § 682.209 (e) or (f), the guaranty agency may charge the lender an insurance premium on each Stafford, SLS, or PLUS loan it guarantees.

(ii) The guaranty agency may use the proceeds of this charge only to guarantee loans and to cover costs incurred by the guaranty agency in the administration of its loan guarantee program.

(iii) The lender may deduct the amount of the premium from the borrower's loan proceeds. For a loan disbursed in more than one installment, the insurance premium must be deducted proportionately from each disbursement of the loan proceeds.

(iv) The amount of the insurance premium may not exceed 3 percent of the principal balance of the loan.

(v) The guaranty agency shall refund to the lender any insurance premium received for a loan under the circumstances specified in § 682.401(b)(9)(vi) (A) and (B).

(vi) The lender shall refund to the borrower by a credit against the borrower's loan balance all or a part of the insurance premium paid by the borrower on a loan under the following circumstances:

(A) The premium, or the portion attributable to a portion of a loan disbursed in more than one installment, must be refunded if the loan check is returned uncashed to the lender.

(B) The premium must be refunded if within 120 days of disbursement—

(*1*) The loan is repaid in full;

(*2*) The loan check has not been negotiated; or

(*3*) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school.

(10) *Payments for lender referral service.* (i) The guaranty agency may not use insurance premiums to pay incentive fees to lenders, except to those lenders who agree to participate in and make FFEL loans (other than Stafford loans that do not qualify for interest benefits) to all eligible students referred under a qualified lender referral service.

(ii) For purposes of this paragraph, the term *qualified lender referral service* means a lender referral service offered by a guaranty agency under which the agency refers to a participating lender each eligible student applying for the service who is either a resident of the State in which the agency is the principal guaranty agency or attending a school in that State and who has sought and been unable to find a lender willing to make a FFEL loan (other than a Stafford loan that does not qualify for interest benefits) to the student.

(11) *Administrative fee for Consolidation loans.* The guaranty agency may charge a lender a fee, not to exceed $50, reasonably calculated to cover the agency's cost of increased or extended liability incurred in guaranteeing a Consolidation loan. The lender may not pass the fee on to the borrower. If it charges the fee, the agency must charge it for all loans made under the agency's Consolidation Loan program.

(12) *Administrative fee for refinancing fixed-rate PLUS or SLS loans.* The guaranty agency may require a lender to pay to the guaranty agency up to 50 percent of the fee the lender charges a borrower under § 682.202(e) for the purpose of defraying the agency's administrative costs incident to the guarantee of a lender's reissuance of a fixed-rate PLUS or SLS loan at a variable interest rate. If it charges the

fee, the agency must charge the same fee to all lenders that refinance under this paragraph.

(13) *Guarantee liability.* The guaranty agency shall guarantee 100 percent of the unpaid principal balance of each loan guaranteed.

(14) *Guaranty agency administration.* In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(15) *Loan assignment.* (i) The guaranty agency shall allow a loan to be assigned only if the loan is fully disbursed and is assigned to—

(A) An eligible lender;

(B) A guaranty agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition, or for other circumstances approved by the Secretary, such as a loan made for attendance at a school that closes;

(C) An educational institution, whether or not it is an eligible lender, in connection with the institution's repayment to the agency or to the Secretary of a guarantee or a reinsurance claim payment made on a loan that was ineligible for the payment;

(D) A Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender; or

(E) The Secretary.

(ii) For the purpose of this paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(16) *Transfer of guarantees.* Except in the case of a transfer of guarantee requested by a borrower seeking a transfer to secure a single guarantor, the guaranty agency may transfer its guarantee obligation on a loan to another guaranty agency, only with the approval of the Secretary, the transferee agency, and the holder of the loan.

(17) *Standards and procedures.* (i) The guaranty agency shall establish, disseminate to concerned parties, and enforce standards and procedures for—

(A) Ensuring that all lenders in its program meet the definition of "eligible lender" in section 435(d) of the Act and have a written lender agreement with the agency;

(B) School and lender participation in its program;

(C) Limitation, suspension, termination of school and lender participation;

(D) Emergency action against a participating school or lender;

(E) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(F) The timely filing by lenders of default, death, disability, and bankruptcy claims.

(ii) The guaranty agency shall ensure that its program and all participants in its program at all times meet the requirements of subparts B, C, D and F of this part.

(18) *Student status confirmation.* (i) The guaranty agency shall establish and use a system and procedures for monitoring the enrollment status of a FFEL program borrower or student on whose behalf a parent has borrowed that includes, at a minimum—

(A) Transmitting to the school, that according to the guaranty agency's records the student most recently attended, a student status confirmation report for completion at least semi-annually in accordance with a schedule established by the agency;

(B) Reporting to the current holder of the loan within 60 days of the receipt of the completed report from the school any change in the student's enrollment status reported by the school that triggers—

(*1*) The beginning of the borrower's grace period; or

(*2*) The beginning or resumption of the borrower's immediate obligation to make scheduled payments.

(ii) The agency shall use the data elements and report format provided in Appendix B to this part, unless the Secretary notifies the guaranty agency that other data elements or a revised format may be used.

(19) *Submission of interest and special allowance information.* Upon the Secretary's request, the guaranty agency shall submit, or require its lenders to submit, information that the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(20) *Submission of information for reports.* The guaranty agency shall require lenders to submit to the agency the information necessary for the agency to complete the reports required by § 682.414(b).

(21) *Guaranty agency transfer of information.* (i) A guaranty agency from which another guaranty agency requests information regarding Stafford and SLS loans made after January 1, 1987, to students who are residents of the State for which the requesting agency is the principal guaranty agency as defined in § 682.800(d) shall provide—

(A) The name and social security number of the student; and

(B) The annual loan amount and the cumulative amount borrowed by the student in loans under the Stafford and SLS programs guaranteed by the responding agency.

(ii) The reasonable costs incurred by an agency in fulfilling a request for information made under paragraph (b)(21)(i) of this section must be paid by the guaranty agency making the request.

(22) *Information of defaults.* The guaranty agency shall upon the request of an eligible institution furnish information with respect to students, including the names and addresses of such students, who were enrolled at the eligible institution and who are in default on the repayment of any loan guaranteed by that agency.

(c)(1) *Lender of last resort.* The guaranty agency shall ensure that it or an eligible lender described in section 435(d)(1)(D) of the Act serves as a lender of last resort in the State in which it is the principal guaranty agency, as defined in § 682.800(d).

(2) The lender of last resort shall make a Stafford loan to any eligible student who satisfies the lender's eligibility requirements and—

(i) Qualifies for interest benefits, pursuant to § 682.301, for a loan amount of at least $200; and

(ii) Has been otherwise unable after conscientious efforts to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act may arrange for a loan required to be made by this paragraph to be made by another eligible lender.

(d) *Review of forms and procedures.* (1) The guaranty agency shall submit to the Secretary its write-off criteria and procedures. The agency may not use these materials until the Secretary approves them.

(2) The guaranty agency shall promptly submit to the Secretary its regulations, statements of procedures and standards, agreements, and other materials that substantially affect the operation of the agency's program, and any proposed changes to those materials. Except as provided in paragraph (d)(1) of this section, the agency may use these materials unless and until the Secretary disapproves them.

(3) The guaranty agency shall use a common application form, promissory note, and other common forms approved by the Secretary.

(4) The guaranty agency must develop and implement appropriate procedures that provide for the granting of a student deferment as specified in § 682.210(a)(6)(iv) and (c)(3) and require their lenders to use these procedures.

(5) The guaranty agency shall ensure that all program materials meet the requirements of Federal and State law, including, but not limited to, the Act and the regulations in this part and part 668.

(e) *Prohibited inducements.* A guaranty agency may not—

(1) Offer directly or indirectly any premium, payment, or other inducement to an employee or student of a school, or an entity or individual affiliated with a school, to secure applicants for FFEL loans;

(2) Conduct unsolicited mailings of student loan application forms to students enrolled in secondary school;

(3) Conduct fraudulent or misleading advertising concerning loan availability.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.402 Death, disability, and bankruptcy payments.

(a) *General.* (1) Rules governing the cancellation of loans due to death, total and permanent disability, or discharge in bankruptcy are set forth in paragraphs (a)(2), (b), (c), and (d) of this section.

(2) If a PLUS loan was obtained by two parents as co-makers and only one of the borrowers dies, becomes totally and permanently disabled, or has his or her loan obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(3) The Secretary does not pay a death, disability, or bankruptcy claim if the loan would not qualify either for payment of a default claim or for reinsurance payments in the event of default.

(b) *Death.* (1) If an individual borrower dies, the obligation of the borrower and any endorser to make any further payments on the loan is canceled.

(2) In determining that a borrower has died, the lender may rely on a death certificate or other proof of death that is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan can be canceled only if the guaranty agency determines that other evidence establishes that the borrower has died.

(3) After receiving information indicating that the borrower has died, the lender, if it believes the information to be reliable, shall suspend any collection activity against the borrower and promptly request that the borrower's representative provide the documentation described in paragraph (b)(2) of this section. During the suspension of collection activity, which may not exceed 30 days, the lender shall attempt diligently to obtain documentation verifying the borrower's death. If, despite diligent attempts, the lender is not able to confirm the borrower's death within 30 days, the lender shall resume collection activity from the point that it had been discontinued and is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

(4) Once the lender has determined under paragraph (b)(2) of this section that the borrower has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(5) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's death.

(c) *Total and permanent disability.* (1) If the lender determines that an individual borrower is totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is canceled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time he or she applied for the loan, unless the borrower's condition has substantially deteriorated later, so as to render the borrower totally and permanently disabled. In the case of a consolidation loan, the condition must not have existed prior to the time the borrower applied for each of the underlying loans, unless the condition substantially deteriorates, so as to render the borrower totally and permanently disabled.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly shall request that the borrower or the borrower's representative submit on a form provided or approved by the Secretary a certification by a physician who is a doctor of medicine or osteopathy and legally authorized to practice in a State that the borrower is totally and permanently disabled. The lender shall continue collection until it receives either the certification of total disability or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. Except as provided in paragraph (c)(4) of this section, after receiving the physician's certification or letter, the lender may not attempt to collect from the borrower or any endorser.

(3) After receiving the physician's certification described in paragraph (c)(2) of this section, the lender shall return any payments that it received from or on behalf of the borrower after the date the borrower or the borrower's representative notified the lender of the borrower's claim of total disability.

(4) If the lender determines that a borrower who claims to be totally and permanently disabled is not in fact disabled, or if the lender does not receive the physician's certification of total disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(2) of this section, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter requesting additional time and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(d) *Bankruptcy*—(1) *General.* If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan in accordance with paragraphs (d) through (i) of this section.

(2) *Notice of bankruptcy filing.* The lender shall determine that a borrower has filed a bankruptcy petition on the basis of a notice of the first meeting of creditors received from the bankruptcy court, other documents showing a petition has been filed, or written notice from the debtor's attorney of the filing date of the petition.

(3) *Suspension of collection activity.* If a lender is notified pursuant to paragraph (d)(2) of this section that a borrower has filed a petition for relief in bankruptcy, the lender shall immediately suspend any collection efforts outside the bankruptcy proceeding—

(i) Against the borrower, and

(ii) If the borrower has filed for relief under Chapters 12 or 13, against any co-maker or endorser.

(4) *Proof of claim.* The lender shall file a proof of claim with the bankruptcy court within—

(i) 30 days after the lender receives a notice of first meeting of creditors unless, in the case of a proceeding under Chapter 7, the notice states that the borrower has no assets; or

(ii) 30 days after the lender receives a notice from the court stating that a

Chapter 7 no-asset case has been converted to an asset case.

(5) *Filing of bankruptcy claim with the guaranty agency.* (i) The lender shall file a bankruptcy claim on the loan with the guaranty agency in accordance with paragraph (e) of this section, if—

(A) The borrower has filed a petition for relief under Chapters 12 or 13 of the Bankruptcy Code; or

(B) The borrower has filed a petition for relief under Chapters 7 or 11 of the Bankruptcy Code and the loan has been in repayment for more than seven years (exclusive of any applicable suspension of the repayment period) from the due date of the first payment until the date of the filing of the petition for relief; or

(C) The borrower has begun an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(ii) In cases not described in paragraph (d)(5)(i) of this section, the lender shall continue to hold the loan notwithstanding the bankruptcy proceeding. Once the bankruptcy proceeding is completed or dismissed, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest accrued from the date of the borrower's filing of the bankruptcy petition until the date the lender is notified that the bankruptcy proceeding is completed or dismissed.

(e) *Claim procedures for a loan by a lender*—(1) *Documentation.* A lender shall provide the guaranty agency with the following documentation when filing a death, disability, or bankruptcy claim:

(i) The original promissory note.

(ii) The loan application.

(iii) In the case of a death claim, those documents that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in paragraph (c)(2) of this section.

(v) In the case of a bankruptcy claim—

(A) Evidence that a bankruptcy petition has been filed, all pertinent documents sent to or received from the bankruptcy court by the lender, and an assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and

(B) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy and all documents supporting those facts.

(2) *Filing deadlines.* A lender shall file a death, disability, or bankruptcy claim within the following periods:

(i) A lender shall file a death or disability claim within 60 days of the date on which the lender determines that a borrower has died or is totally and permanently disabled.

(ii) A lender shall file a bankruptcy claim with the guaranty agency by the earlier of—

(A) 30 days after the date on which the lender receives notice of the first meeting of creditors or other information described in paragraph (d)(2) of this section; or

(B) 15 days after the lender is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship, or, if the lender secures an extension of time within which an answer may be filed, 25 days before the expiration of that extended period, whichever is later.

(f) *Payment of death, disability, and bankruptcy claims by the guaranty agency*—(1) *General.* (i) The guaranty agency shall review a death, disability, or bankruptcy claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraph (f) of this section, not later than 45 days after the claim was filed by the lender.

(ii) In the case of a bankruptcy claim, the guaranty agency shall, upon receipt of the claim from the lender, immediately take those actions required under paragraph (g) of this section to oppose the discharge of the loan by the bankruptcy court.

(2) *Amount of loss to be paid on a claim.* (i) The amount of loss payable on a death, disability, or bankruptcy claim is equal to the unpaid balance of principal and interest determined in accordance with paragraph (f)(3) of this section.

(ii) The unpaid balance of principal may include interest capitalized in accordance with § 682.202(b).

(3) *Payment of interest.* If the guarantee covers unpaid interest, the amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (e)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(g) *Guaranty agency participation in bankruptcy proceedings*—(1) *Undue hardship claims.* (i) In response to a petition filed with regard to any bankruptcy proceeding by the borrower for discharge under 11 U.S.C. 523(a)(8)(B) on the grounds of undue hardship, the guaranty agency shall determine on the basis of reasonably available information—

(A) Whether the first payment on the loan was due less than 7 years (exclusive of any applicable suspension of the repayment period) before the filing of the petition for relief commencing the bankruptcy case; and

(B) Whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.

(ii) If the agency determines that repayment would not constitute an undue hardship, the agency shall then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs.

(iii) If the expected costs of opposing the discharge petition do not exceed one-third of the total amount owed on the loan, the agency shall—

(A) Oppose the borrower's petition for a determination of dischargeability; and

(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(iv) In opposing a petition for a determination of dischargeability on the grounds of undue hardship, a guaranty agency may agree to discharge of a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

(2) *Response by a guaranty agency to plans proposed under Chapters 11, 12, and 13 for loans in repayment more than seven years.* The guaranty agency shall take the following actions with regard to a loan that was in repayment for at least seven years (exclusive of applicable suspensions of the repayment period) when a petition for relief in bankruptcy under Chapter 11, 12, or 13 was filed:

(i) The agency is not required to respond to a proposed plan that—

(A) Provides for repayment of the full outstanding balance of the loan;

(B) Makes no provision with regard to the loan or to general unsecured claims.

(ii) In any other case, the agency shall determine, based on a review of its own

records and documents filed by the debtor in the bankruptcy proceeding—

(A) What part of the loan obligation will be discharged under the plan as proposed;

(B) Whether the plan itself or the classification of the loan under the plan meets the requirements of 11 U.S.C. 1129, 1225, or 1325, as applicable; and

(C) Whether grounds exist under 11 U.S.C. 1112, 1208, or 1307, as applicable, to move for conversion or dismissal of the case.

(iii) If the agency determines that grounds exist to challenge the proposed plan, the agency shall, as appropriate, object to the plan or move to dismiss the case, if—

(A) The costs of litigation of these actions are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan; and

(B) With respect to an objection under 11 U.S.C. 1325, the additional amount that may be recovered under the plan if an objection is successful can reasonably be expected to equal or exceed the cost of litigating the objection.

(iv) The agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan and demonstrates entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge and move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

(3) *Response by guaranty agency to plans proposed under Chapters 11, 12, and 13 for loans in repayment less than seven years.* The guaranty agency shall take the following actions with regard to a loan that was in repayment for less than seven years (exclusive of applicable suspensions of the repayment period) when a petition for relief in bankruptcy under chapter 11, 12, or 13 was filed:

(i) If the debtor proposes a plan that is expected to end less than seven years (exclusive of applicable suspensions of the repayment period) after the first payment was due on the loan, the agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan and demonstrate entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge and move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

(ii) If the debtor proposes a plan that is expected to end more than seven years (exclusive of applicable suspensions of the repayment period) after the first payment was due on the loan, the agency shall take the actions required under paragraph (h)(2) of this section.

(h) *Mandatory repurchase by lender.* (1) The lender shall repurchase from the guaranty agency a loan held by the agency pursuant to a bankruptcy claim paid to that lender promptly after the earliest of the following events:

(i) The entry of an order denying or revoking discharge or dismissing a proceeding under any chapter.

(ii) A ruling in a proceeding under chapter 7 or 11 that the loan is not dischargeable under 11 U.S.C. 523(a)(8)(B) or other applicable law.

(iii) The entry of an order granting discharge under chapter 12 or 13, or confirming a plan of arrangement under chapter 11 in a proceeding begun less than 7 years (exclusive of any applicable suspension of the repayment period) after the first payment due date of the loan, unless the court determined that the loan is dischargeable under 11 U.S.C. 523(a)(8)(B) on grounds of undue hardship.

(2) The lender may capitalize past-due interest accrued on a loan repurchased under this paragraph.

(i) *Claims for reimbursement from the Secretary on loans held by guarantee agencies.* (1)(i) The Secretary reimburses the guaranty agency for its losses on bankruptcy claims paid to lenders after—

(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8)(B) with respect to a proceeding initiated under chapter 7 or chapter 11 begun less than 7 years (exclusive of any applicable suspension of the repayment period) after the first payment due date of the loan; or

(B) With respect to any other loan, after the agency pays the claim to the lender.

(ii) The guaranty agency shall refund to the Secretary the full amount of reimbursement received from the Secretary on a loan that a lender repurchases under this section.

(2) The Secretary pays a death, disability, or bankruptcy claim in an amount determined under paragraph (i)(3) of this section on a loan held by a guaranty agency after the agency has paid a default claim to the lender thereon and received payment under its reinsurance agreement. The Secretary reimburses the guaranty agency only if—

(i) The guaranty agency determines that the borrower has died, become totally and permanently disabled since applying for the loan, or has filed for relief in bankruptcy, in accordance with the procedures set forth in paragraphs (b)–(d) of this section. For purposes of this paragraph, references to the "lender" and "guaranty agency" in paragraphs (b)–(d) of this section mean the guaranty agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the guaranty agency determines that the borrower (or in the case of a PLUS Program loan each of the co-makers) has died, become totally and permanently disabled since applying for the loan, or has filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period;

(iii) In the case of a Consolidation loan, the guaranty agency determines that the borrower has died, become totally and permanently disabled since applying for the Consolidation loan, or has filed the petition for relief in bankruptcy within the maximum repayment period described in § 682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

(iv) The guaranty agency has not written off the loan in accordance with the procedures established by the agency pursuant to § 682.410(b)(6)(x);

(v) The guaranty agency has exercised due diligence in the collection of the loan, in accordance with the procedures established by the agency pursuant to § 682.410(b)(6)(x), until the borrower (or in the case of a PLUS loan each of the co-makers) died, became totally and permanently disabled, filed a chapter 12 or 13 petition, or had the loan discharged in bankruptcy; and

(iv) In the case of a bankruptcy claim, the guaranty agency has complied with the requirements of paragraph (g) of this section.

(3)(i) The Secretary pays the guaranty agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. This interest includes interest that accrues during the shorter of—

(A) The period from the date the guaranty agency determines that the borrower (or each of the co-makers) died, became totally and permanently disabled, filed a chapter 12 or 13

bankruptcy petition, or had the loan discharged in bankruptcy until the Secretary authorizes payment; or

(B) 60 days.

(ii) In addition, the Secretary pays the guaranty agency for any unpaid interest that the agency paid as part of the default claim and for which the agency was not previously reimbursed by the Secretary.

(j) *Payments received after the Secretary's payment of a death, disability, or bankruptcy claim.* If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan on which the Secretary previously paid a bankruptcy claim, the guaranty agency shall remit 100 percent of these payments to the Secretary.

(k) *Applicable suspension of the repayment period.* For purposes of this section and 11 U.S.C. 523(a)(8)(B) with respect to loans guaranteed under the FFEL programs, an applicable suspension of the repayment period—

(1) Includes any period, including a period of deferment, during which the lender, at the request of the borrower, does not require the borrower to make payments on the loan;

(2) Begins on the date on which the borrower qualifies for the requested deferment or the lender grants the requested forbearance;

(3) Closes on the later of the date on which—

(i) The condition for which the requested deferment or forbearance was received ends; or

(ii) The lender receives notice of the end of the condition for which the requested deferment or forbearance was received, if the condition ended earlier than represented by the borrower at the time of the request and the borrower did not notify timely the lender of the date on which the condition actually ended; and

(4) Includes the period between the end of the borrower's grace period and the first payment due date established by the lender in the case of a borrower who entered repayment without the knowledge of the lender.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087)

§ 682.403 Federal advances for claim payments.

(a) The Secretary makes an advance to a guaranty agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to—

(1) A State guaranty agency; or

(2) 1 or more private nonprofit guarantee agencies in a State if, during a fiscal year—

(i) The State does not have a guaranty agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have a program for that year; and

(iii) Each private nonprofit guaranty agency—

(A) Agrees to establish at least 1 office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an eligible educational institution and that it does not have any substantial affiliation with an eligible educational institution.

(b) A guaranty agency shall apply to the Secretary in order to receive an initial advance.

(c)(1) An advance may be made to a new guaranty agency for each of five consecutive calendar years. A new agency is an agency that entered into a basic agreement on or after October 12, 1976, or that was not actively carrying on a loan guarantee program on or before October 12, 1976.

(2)(i) A guaranty agency may request that the initial advance be made on a specified date. The Secretary pays subsequent advances on the same day that the initial advance was made for each of the four succeeding calendar years.

(ii) An additional advance may be made to a private nonprofit guaranty agency only if the agency continues to qualify under paragraph (a) of this section.

(d) The Secretary makes an advance on terms and conditions specified in a Federal advances for claim payments agreement between the Secretary and the guaranty agency.

(e) In the case of a private nonprofit guaranty agency, the repayment of advances is determined separately for each State for which the agency has received in advance under this section, in accordance with section 422(c)(4) of the Act.

(f) A guaranty agency shall return advances provided under this section in accordance with the provisions of sections 422 (c) and (d) of the Act.

(Authority: 20 U.S.C. 1072, 1082)

§ 682.404 Federal reinsurance agreement.

(a) *General.* (1) The Secretary may enter into a reinsurance agreement with a guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement the Secretary reimburses the guaranty agency for 100 percent of its losses on default claim payments to lenders.

(2) For purposes of this section—

(i) *Losses* means the amount of unpaid principal and accrued interest the agency paid on a default claim filed by a lender on a reinsured loan, minus payments made by or on behalf of the borrower after default but before the Secretary reimburses the agency;

(ii) *Preclaims assistance* means collection assistance provided to the lender by the guaranty agency that includes collection activities that are comparable in intensiveness to the level of preclaims assistance performed by the guaranty agency as of October 16, 1990, and involves the initiation by the agency of at least 3 collection activities, including at least 1 letter to the borrower designed to encourage the borrower to begin or resume repayment; and

(iii) *Supplemental preclaims assistance* means collection assistance provided to the lender by the guaranty agency that involves the initiation by the agency of at least two collection activities designed to encourage the borrower to begin or resume payment that is begun on or after the 120th day of delinquency.

(3)(i) If an account has been subject to supplemental preclaims assistance and is not submitted as a default claim by the lender to the guaranty agency by the 150th day after the loan becomes 120 days delinquent, the Secretary will pay the guaranty agency $50.

(ii) If a guaranty agency contracts with an outside entity to perform any supplemental preclaims assistance activity, that entity may not—

(A) Hold or service the loan;

(B) Own, control, or share common ownership with the holder or servicer of the loan; or

(C) Hold a contract with the agency to perform collection services on the loan in the event of default.

(iii) For purposes of paragraph (a)(3)(i) of this section, an "account" includes 1 or more FFEL programs loans that were—

(A) Made to the same borrower;

(B) Held by the same lender;

(C) Guaranteed by the same guaranty agency;

(D) Subject to preclaims assistance by the same agency; and

(E) Covered by the same supplemental preclaims assistance request.

(4) A guaranty agency's loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(5) If a lender has requested preclaims assistance as described in paragraph (a)(2)(ii) of this section, the agency shall notify the school for attendance at which the borrower received the loan of the lender's request by providing the school with a copy of that request, or by other means.

(b) *Reinsurance rate.* (1) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 5 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals 90 percent of its losses.

(2) If the total of reinsurance claims paid during a fiscal year by the Secretary to a guaranty agency reaches 9 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year is 80 percent of its losses.

(3) For purposes of this section, the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year does not include amounts paid on claims by the guaranty agency—

(i) On loans considered in default under § 682.412(e);

(ii) Under a policy established by the agency that is consistent with § 682.509(a)(1); or

(iii) That were filed by lenders at the direction of the Secretary.

(4) Notwithstanding paragraphs (b) (1) and (2) of this section, for a guaranty agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976, the Secretary may pay 100 percent of its losses during five consecutive fiscal years beginning with the first year of its operation.

(5) For purposes of this section, *amount of loans in repayment* means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was canceled;

(B) The loan guarantee was transferred to another agency;

(C) The borrower has not yet reached the repayment period;

(D) Payment in full has been made by the borrower;

(E) The borrower was in deferment status at the time repayment was scheduled to begin and remains in deferment status;

(F) Reinsurance coverage has been lost and cannot be regained; and

(G) The agency paid claims, excluding the amount of those claims—

(*1*) Paid under § 682.412(e);

(*2*) Paid under a policy established by the agency that is consistent with § 682.509(a)(1); or

(*3*) Paid at the direction of the Secretary.

(c) *Submission of reinsurance rate base data.* The guaranty agency shall submit to the Secretary the quarterly report required by the Secretary for the previous quarter ending September 30 containing complete and accurate data in order for the Secretary to calculate the amount of loans in repayment at the end of the preceding fiscal year. The Secretary does not pay a reinsurance claim to the guaranty agency after the date the quarterly report is due until the quaranty agency submits a complete and accurate report.

(d) *Reinsurance fee.* (1) Except for loans made under § 682.209(e), (f) and (h), a guaranty agency shall pay to the Secretary during each fiscal year in quarterly installments a reinsurance fee equal to—

(i) 0.25 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year; or

(ii) 0.5 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year if the agency's reinsurance claims paid reach the amount described in paragraph (b)(1) of this section at any time during that fiscal year.

(2) The agency that is the original guarantor of a loan shall pay the reinsurance fee to the Secretary even if the guaranty agency transfers its guarantee obligation on the loan to another guaranty agency.

(3) The guaranty agency shall pay the reinsurance fee required by paragraph (d)(1) of this section due the Secretary for each calendar quarter ending March 31, June 30, September 30, and December 31, within 90 days after the end of the applicable quarter or within 30 days after receiving written notice from the Secretary that the fees are due, whichever is earlier.

(e) *Initiation or extension of agreements.* In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of—

(1) Efforts by the guaranty agency and the lenders to which it provides guarantees to collect outstanding loans as required by § 682.410(b) (6) or (7), and § 682.411;

(2) Efforts by the guaranty agency to make FFEL loans available to all eligible borrowers; and

(3) Other relevant aspects of the guaranty agency's program operations.

(f) *Application of borrower payments.* Payments made to a guaranty agency by a borrower may, at the agency's option, be applied first to the payment of reinsured interest owed or to defray the agency's collection costs on the loan. The borrower's payments may be applied to other charges, such as late charges, only after the repayment of all principal and interest.

(g) *Federal share of borrower payments.* (1) If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall pay to the Secretary the Secretary's equitable share of those payments.

(2) For purposes of this section, *the Secretary's equitable share* means that portion of borrower payments that remains after the agency has deducted—

(i) An amount equal to the complement of the reinsurance percentage that was in effect when the reinsurance payment was made by the Secretary; and

(ii) 30 percent of borrower payments.

(3) Unless the Secretary approves otherwise, the guaranty agency shall pay to the Secretary the Secretary's equitable share of borrower payments within 45 days of its receipt of the payments.

(h) *Nondiscrimination.* (1) A guaranty agency may not engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular school within any State served by the guaranty agency, length of the borrower's educational program, or the borrower's academic year in school.

(2) For purposes of this section a guaranty agency is deemed to be serving a State if it guarantees a loan that is—

(i) Made by a lender located in a State not served by the agency;

(ii) Made to a borrower who is a resident of a State not served by the agency; and

(iii) Made for attendance at a school located in the State.

(i) *Other terms.* The reinsurance agreement contains other terms and conditions that the Secretary finds necessary to—

(1) Promote the purposes of the FFEL programs and to protect the United States from unreasonable risks of loss;

(2) Ensure proper and efficient administration of the loan guarantee program; and

(3) Ensure that due diligence will be exercised in the collection of loans.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.405 [Reserved]

§ 682.406 Conditions of reinsurance coverage.

(a) A guaranty agency is entitled to reinsurance payments on a loan only if—

(1) The lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the agency;

(2) With respect to the reinsurance payment on the portion of a loan represented by a single disbursement of loan proceeds—

(i) The check for the disbursement was cashed within 120 days after disbursement; or

(ii) The proceeds of the disbursement made by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have been released from the restricted account maintained by the school within 120 days after disbursement;

(3) The lender provided an accurate collection history and an accurate payment history to the guaranty agency with the default claim filed on the loan showing that the lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of § 682.411, including collection efforts against each endorser;

(4) The loan was in default before the agency paid a default claim filed thereon;

(5) The lender filed a default claim thereon with the guaranty agency within 90 days of default;

(6) The lender resubmitted a properly documented default claim to the guaranty agency not later than 60 days from the date the agency had returned that claim due solely to inadequate documentation, except that interest accruing beyond the 30th day after the date the guaranty agency returned the claim is not reinsured unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to the 30th day;

(7) The lender satisfied all conditions of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan following the lender's failure to satisfy such a condition pursuant to written policies and procedures established by the agency;

(8) The agency paid or returned to the lender for additional documentation a default claim thereon filed by the lender within 90 days of the date the lender filed the claim or, if applicable, the additional documentation, except that interest accruing beyond the 60th day after the date the lender originally filed the claim is not reinsured;

(9) The agency submitted a request for the payment on a form required by the Secretary no later than 45 days following payment of a default claim to the lender, which must take place no earlier than 90 days following default in the case of a loan payable in monthly installments, or no earlier than 30 days following default, in the case of a loan payable in less frequent installments;

(10) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(11) The agency exercised due diligence in collection of the loan in accordance with § 682.410(b)(6) or (7);

(12) The agency and lender complied with all other Federal requirements with respect to the loan including the payment of origination fees; and

(13) The agency assigns the loan to the Secretary, if so directed, in accordance with the requirements of § 682.409.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make or require repayment of a reinsurance payment if, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of paragraph (a)(3) or (a)(5) of this section is set forth in Appendix D to this part.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.407 Administrative cost allowance for guaranty agencies.

(a)(1) The Secretary pays an administrative cost allowance to a guaranty agency having a basic program agreement.

(2) The administrative cost allowance paid to a guaranty agency for any fiscal year equals 1 percent of the total principal amount of loans, other than Consolidation loans, guaranteed by the agency during that fiscal year.

(b)(1) To receive an administrative cost allowance payment, the guaranty agency shall submit an application to the Secretary by January 1 of the fiscal year for which it is requesting the allowance.

(2) In addition to other information and assurances that the Secretary may reasonably require, the application must contain—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs to be incurred in that fiscal year that will be eligible for payments under this section;

(iii) Assurances that the agency will use sufficient administrative and fiscal procedures, including an independent audit conducted in accordance with § 682.410(b)(1), to ensure that administrative cost allowances are used in accordance with the provisions of this section;

(iv) A report of the most recent audit conducted in accordance with § 682.410(b)(1) and submitted in a format and containing information required by the Secretary;

(v) Assurances that the guaranty agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(vi) An estimate of the total amount of new FFEL program loans, other than Consolidation loans, expected to be guaranteed during the fiscal year; and

(vii) Assurances that the agency's program meets and will continue to meet all the requirements contained in § 682.401(b).

(3) The application for an administrative cost allowance by a guaranty agency and the Secretary's payment of that allowance establishes an agreement between the Secretary and the guaranty agency with respect to the assurances contained in the application.

(c)(1) A guaranty agency may use the administrative cost allowance to meet only administrative costs related to the FFEL programs.

(2) A guaranty agency may not use the administrative cost allowance to meet costs—

(i) For which the agency has been or will be reimbursed from the 30 percent retention of collections permitted under § 682.404(g)(2)(ii); or

(ii) For which the agency has been or will be reimbursed from a source other than the payment made under this section.

(d) The Secretary pays an administrative cost allowance on a loan only to the guaranty agency that

originally guaranteed the loan, even if the guaranty agency transfers its guarantee obligation on the loan to another guaranty agency.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.408 Loan disbursement through an escrow agent.

(a) *General.* (1) A guaranty agency or an eligible lender may act as an escrow agent for the purpose of receiving Stafford, SLS, and PLUS loan proceeds disbursed by an eligible lender other than a school, State lender, or a State agency or instrumentality, and transmitting those proceeds to the borrower's school if the lender and the escrow agent have entered into a written agreement for this purpose.

(2) The agreement must provide that—

(i) The lender may make payments into an escrow account that is administered by the escrow agent in accordance with the requirements of paragraph (c) of this section and § 682.207(b)(1)(iv);

(ii) The lender shall promptly notify the borrower's school when funds are escrowed for the borrower; and

(iii) The escrow agent is authorized to—

(A) Transmit the proceeds according to the note evidencing the loan;

(B) Commingle the proceeds of the loans paid to it pursuant to an escrow agreement;

(C) Invest the loan proceeds only in obligations of the Federal Government or obligations that are insured or guaranteed by the Federal Government; and

(D) Retain for its own use interest or other earnings on those investments.

(b) *Disbursement by the lender.* Subject to § 682.207(b)(1)(iii), the lender may disburse the loan proceeds to the escrow agent using any method agreed to by the escrow agent and the lender.

(c) *Transmittal of FFEL loan proceeds by the escrow agent.* (1) The escrow agent shall transmit Stafford and SLS loan proceeds received from a lender under this section to a school in accordance with the requirements of § 682.207(b)(1) (ii) and (iv) not later than 21 days after the agent receives the funds from the lender.

(2) The escrow agent shall transmit PLUS loan proceeds received from a lender under this section to a borrower in accordance with the requirements of § 682.207(b)(1) (ii) and (iv) not later than 21 days after the agent receives the funds from the lender.

(d) *Return of untransmitted proceeds.* The escrow agent shall return any untransmitted proceeds of a loan to the lender within 15 working days after receiving information indicating that the student has not enrolled, or has ceased to be enrolled on at least a half-time basis, for the period of enrollment for which the loan was intended.

(Authority: 20 U.S.C. 1078, 1082)

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

(a) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary may direct a guaranty agency to assign to the Secretary any loan held by the agency on which the agency seeks, or has received, payment under § 682.402(d), § 682.402(i), or § 682.404. In making this determination, the Secretary considers all relevant information available to the Secretary, including any information and documentation submitted by the agency. The Secretary may identify particular loans to be assigned or may require assignment of particular categories of loans that share characteristics that the Secretary determines make those loans appropriate for assignment.

(b)(1) A guaranty agency that assigns a defaulted loan to the Secretary under this section thereby releases all rights and title to that loan. The Secretary does not pay the guaranty agency any compensation for a loan assigned under this section.

(2) The guaranty agency does not share in any amounts received by the Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan or the agency's previous collection costs.

(c)(1) A guaranty agency shall assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency shall submit this information and documentation in the form (e.g., computer tape) and in the format specified by the Secretary.

(2) The guaranty agency shall execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section.

(3) If the agency does not provide the required information and documentation in the form and format required by the Secretary, the Secretary may, at his option—

(i) Allow the agency to revise the agency's submission to include the required information and documentation in the specified form and format;

(ii) In the case of an improperly formatted computer tape, reformat the tape and assess the cost of the activity against the agency;

(iii) Reorganize the material submitted and assess the cost of that activity against the agency; or

(iv) Obtain from other agency records and add to the agency's submission any information from the original submission, and assess the cost of that activity against the agency.

(4) For each loan assigned, the agency shall submit to the Secretary the following documents associated for each loan, assembled in the order listed below:

(i) The promissory note.

(ii) Any documentation of a judgment entered on the loan.

(iii) A written assignment of the loan or judgment, unless this assignment is affixed to the promissory note.

(iv) The loan application.

(v) A payment history for the loan, as described in § 682.414(a)(1)(ii)(C).

(vi) A collection history for the loan, as described in § 682.414(a)(1)(ii)(D).

(5) The agency may submit certified copies of required documents in lieu of originals if no originals exist.

(d)(1) If the Secretary determines that the agency has not submitted a document or record required by paragraph (c) of this section, and the Secretary decides to allow the agency an additional opportunity to submit the omitted document under paragraph (c)(3)(i) of this section, the Secretary notifies the agency and provides a reasonable period of time for the agency to submit the omitted record or document.

(2) If the omitted document is not submitted within the time specified by the Secretary, the Secretary determines whether that omission impairs the Secretary's ability to collect the loan.

(3) If the Secretary determines that the ability to collect the loan has been impaired under paragraph (d)(2) of this section, the Secretary assesses the agency the amount paid to the agency under the reinsurance agreement and accrued interest at the rate applicable to the borrower under § 682.410(b)(3).

(4) The Secretary reassigns to the agency that portion of the loan determined to be unenforceable by the Department.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) *Fiscal requirements*—(1) *Reserve fund assets.* The guaranty agency shall establish and maintain a reserve fund to be used solely for the FFEL program to

which the guaranty agency shall credit—

(i) Federal advances obtained and matching funds required under section 422(a) of the Act;

(ii) Funds appropriated by a State for the agency's loan guarantee program;

(iii) Federal advances obtained under section 422(c) of the Act;

(iv) Funds received by the guaranty agency as loan insurance premiums;

(v) Administrative cost allowances received by the guaranty agency under § 682.407;

(vi) Funds received by the guaranty agency for the agency's loan guarantee program from gift, grant, or other sources;

(vii) Funds collected on FFEL loans;

(viii) Death, disability, bankruptcy, and reinsurance payments received from the Secretary; and

(ix) Investment earnings on the reserve fund.

(2) *Uses of reserve fund assets.* Except as provided in paragraphs (a)(3)–(a)(5) of this section, a guaranty agency may use the assets of the reserve fund established under paragraph (a)(1) of this section only to—

(i) Pay default claims;

(ii) Pay death, disability, and bankruptcy claims;

(iii) Refund overpayments of insurance premiums;

(iv) Pay to the Secretary the Secretary's equitable share of borrower payments;

(v) Repay advances and other funds owed to the Secretary; and

(vi) Make payments to lenders that participate in the loan referral service under section 428(e) of the Act.

(3) *Special rule for use of certain reserve fund assets.* (i) Except as provided in paragraph (a)(4) of this section, a guaranty agency also may use funds received as insurance premiums, administrative cost allowances, amounts collected on FFEL loans, interest or investment earnings, and receipts described in paragraph (a)(1)(vi) of this section only for payments necessary to perform functions directly related to the guaranty agency's agreement with the Secretary and for the proper administration of the guaranty agency's FFEL loan guarantee activities.

(ii) The guaranty agency shall use funds received as Federal advances under section 422(c) of the Act, and interest or other earnings on those advances, only to pay default claims.

(iii) The guaranty agency shall account separately for the funds described in paragraph (a)(3)(i) of this section.

(4) The guaranty agency may invest the assets of the reserve fund described in paragraph (a)(1) of this section only in low-risk securities, such as obligations issued or guaranteed by the United States or a State and shall exercise the level of care in that investment required of a fiduciary charged with the duty of investing the money of others.

(5) If the guaranty agency uses any funds required to be credited to the reserve fund under paragraph (a)(1) of this section to develop or purchase an asset of any kind—

(i) If the agency subsequently sells or otherwise derives revenue from uses of the asset that are unrelated to FFEL program guarantee activities, the agency promptly shall deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the sale proceeds or revenue equal to the percentage of the original development cost or purchase price of the asset paid with the reserve fund monies; and

(ii) If the agency subsequently converts the asset, in whole or in part, to a use unrelated to its FFEL loan guarantee activities, the agency promptly shall deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the fair market value or, in the case of a temporary conversion, the rental value of the portion of the asset employed for the unrelated use, equal to the percentage of the original development cost or purchase price paid with the reserve fund monies.

(b) *Administrative requirements*—(1) *Independent audits.* The guaranty agency shall arrange for an independent financial and compliance audit of the agency's FFEL program as follows:

(i) With regard to a guaranty agency that is an agency of a State government, an audit must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.

(ii) With regard to a guaranty agency that is a nonprofit organization, an audit must be conducted in accordance with OMB Circular A–133, Audits of Institutions of Higher Education and Other Nonprofit Organizations and 34 CFR 74.61(h)(3). If a nonprofit guaranty agency meets the criteria in Circular A–133 to have a program specific audit, and chooses that option, the program specific audit must meet the following requirements:

(A) The audit must examine the agency's compliance with the Act, applicable regulations, and agreements entered into under this part.

(B) The audit must examine the agency's financial management of its FFEL program activities.

(C) The audit must be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO) Government Auditing Standards. Procedures for audits are contained in an audit guide developed by, and available from, the Office of the Inspector General of the Department.

(D) The audit must be conducted annually and must be submitted to the Secretary within six months of the end of the audit period. The first audit must cover the agency's activities for a period that includes July 23, 1992, unless the agency is currently submitting audits on a biennial basis, and the second year of its biennial cycle starts on or before July 23, 1992. Under these circumstances, the agency shall submit a biennial audit that includes July 23, 1992 and submit its next audit as an annual audit.

(2) *Collection charges.* Whether or not provided for in the borrower's promissory note, the guaranty agency shall charge a borrower an amount equal to reasonable costs incurred by the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These costs may include, but are not limited to, all attorney's fees, collection agency charges, and court costs. The amount charged a borrower shall equal the lesser of—

(i) The amount that would be charged for the costs of collection under the formula in 34 CFR 30.60; or

(ii) The amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

(3) *Interest charged by guaranty agencies.* The guaranty agency shall charge the borrower interest on the amount owed by the borrower after the capitalization required under paragraph (b)(4) of this section has occurred at a rate that is the greater of—

(i) The rate established by the terms of the borrower's original promissory note;

(ii) In the case of a loan for which a judgment has been obtained, the rate provided for by State law.

(4) *Capitalization of unpaid interest.* The guaranty agency shall capitalize any unpaid interest due the lender from the borrower at the time the agency pays a default claim to the lender.

(5) *Credit bureau reports.* (i) After the completion of the procedures in paragraph (b)(5)(ii) of this section, the guaranty agency shall, after it has paid a default claim, report promptly, but not less than sixty days after completion of the procedures in paragraph (b)(6)(iii) of this section, and on a regular basis, to all national credit bureaus—

(A) The total amount of loans made to the borrower and the remaining balance of those loans;

(B) The date of default;

(C) Information concerning collection of the loan, including the repayment status of the loan;

(D) Any changes or corrections in the information reported by the agency that result from information received after the initial report; and

(E) The date the loan is fully repaid by or on behalf of the borrower or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability.

(ii) The guaranty agency, promptly after it pays a default claim on a loan but before it reports the default to a credit bureau or assesses collection costs against a borrower, shall provide the borrower with—

(A) Written notice that meets the requirements of paragraph (b)(5)(vi) of this section regarding the proposed actions;

(B) An opportunity to inspect and copy agency records pertaining to the loan obligation;

(C) An opportunity for an administrative review of the legal enforceability or past-due status of the loan obligation; and

(D) An opportunity to enter into a repayment agreement on terms satisfactory to the agency.

(iii) The procedures set forth in 34 CFR 30.20–30.33 (administrative offset) satisfy the requirements of paragraph (b)(5)(ii) of this section.

(iv)(A) In response to a request submitted by a borrower, after the deadlines established under agency rules, for access to records, an administrative review, or for an opportunity to enter into a repayment agreement, the agency shall provide the requested relief but may continue reporting the debt to credit bureaus until it determines that the borrower has demonstrated that the loan obligation is not legally enforceable or that alternative repayment arrangements satisfactory to the agency have been made with the borrower.

(B) The deadline established by the agency for requesting administrative review under paragraph (b)(5)(ii)(C) of this section must allow the borrower at least 60 days from the date the notice described in paragraph (b)(5)(ii)(A) of this section is sent to request that review.

(v) An agency may not permit an employee, official, or agent to conduct the administrative review required under this paragraph if that individual is—

(A) Employed in an organizational component of the agency or its agent that is charged with collection of loan obligations; or

(B) Compensated on the basis of collections on loan obligations.

(vi) The notice sent by the agency under paragraph (b)(5)(ii)(A) of this section must—

(A) Advise the borrower that the agency has paid a default claim filed by the lender and has taken assignment of the loan;

(B) Identify the lender that made the loan and the school for attendance at which the loan was made;

(C) State the outstanding principal, accrued interest, and any other charges then owing on the loan;

(D) Demand that the borrower immediately begin repayment of the loan;

(E) Explain the rate of interest that will accrue on the loan, that all costs incurred to collect the loan will be charged to the borrower, the authority for assessing these costs, and the manner in which the agency will calculate the amount of these costs;

(F) Notify the borrower that the agency will report the default to all national credit bureaus to the detriment of the borrower's credit rating;

(G) Explain the opportunities available to the borrower under agency rules to request access to the agency's records on the loan, to request an administrative review of the legal enforceability or past-due status of the loan, and to reach an agreement on repayment terms satisfactory to the agency to prevent the agency from reporting the loan as defaulted to credit bureaus and provide deadlines and method for requesting this relief;

(H) Unless the agency uses a separate notice to advise the borrower regarding other proposed enforcement actions, describe specifically any other enforcement action, such as offset against State income tax refund or wage garnishment that the agency intends to use to collect the debt, and explain the procedures available to the borrower prior to those other enforcement actions for access to records, for an administrative review, or for agreement to alternative repayment terms;

(I) Describe the grounds on which the borrower may object that the loan obligation as stated in the notice is not a legally enforceable debt owed by the borrower;

(J) Describe any appeal rights available to the borrower from an adverse decision on administrative review of the loan obligation;

(K) Describe any right to judicial review of an adverse decision by the agency regarding the legal enforceability or past-due status of the loan obligation; and

(L) Describe the collection actions that the agency may take in the future if those presently proposed do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and assignment of the loan to the Secretary for collection by offset against Federal income tax refunds or the filing of a lawsuit against the borrower by the Federal Government.

(6) *Collection efforts on defaulted loans.* (i) The guaranty agency shall engage in at least the collection activities described in paragraphs (b)(6)(iii)–(xii) of this section on a loan on which it pays a default claim filed by a lender, except that the agency may engage in the collection activities described in paragraph (b)(7) of this section in lieu of the activities described in paragraphs (b)(6)(iii)–(vi) of this section.

(ii)(A) The periods of time set forth in paragraphs (b)(6)(iii)–(xii) and (b)(7) of this section refer to the number of days that elapse from the date the agency pays a default claim on a loan or on multiple loans for a borrower, or, in the case of a borrower whom the agency locates through the use of skip-tracing under paragraph (b)(6)(xii)(A) of this section, the number of days that elapse from the date the agency obtains the borrower's correct address. These periods of time do not include any periods during which the agency is engaged in activities related to administrative wage garnishment, or is receiving a payment through garnishment at least once every 60 days, or during which the agency is engaged in an administrative review of the borrower's indebtedness on the loan pursuant to a request by the borrower under paragraph (b)(5)(iv) of this section. References to the "borrower" in this paragraph and paragraph (b)(7) of this section include all endorsers on a loan.

(B) The agency may institute a civil suit against the borrower earlier than the first day of the period described in paragraph (b)(6)(vii) of this section. Upon instituting suit, the agency is not required thereafter to follow the procedures in paragraphs (b)(6)(iii) or (b)(7) of this section.

(C) Upon receipt of a payment from a borrower during a period described in paragraphs (b)(6)(iii) or (iv) of this section, the agency is not required to follow the specific collection efforts described in paragraphs (b)(6)(iii)–(vii) of this section but shall diligently attempt to collect the loan for 60-day following receipt of the payment. If the agency receives no payments during the 60-day period, the agency shall resume

its use of the collection efforts described in paragraphs (b)(6)(iv)–(ix) of this section, treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(6)(iv) of this section.

(iii) 1–45 days: During this period, the agency shall—

(A) Send to the borrower the written notice described in paragraph (b)(5)(ii) of this section; and

(B) Diligently attempt to contact the borrower by telephone, as defined in § 682.411(1) (with references to "the lender" understood to mean "the agency"), to demand payment of the loan.

(iv) 46–180 days: During this period the agency shall—

(A) Engage in at least two diligent attempts to contact the borrower by telephone, as defined in § 682.411(1) (with references to "the lender" understood to mean "the agency") to demand repayment of the loan; and

(B) Send at least three written notices to the borrower forcefully demanding that the borrower immediately begin repayment of the loan and informing the borrower that the default has been reported to all national credit bureaus (if that is the case) and that the borrower's credit rating may thereby have been damaged. The final notice also must indicate that it is the final notice the borrower will receive before the agency will take more forceful action, including the possibility of instituting a civil suit, to compel repayment of the loan.

(v) At no point during the periods described in paragraphs (b)(6) (iii) and (iv) of this section may the agency permit the occurrence of a gap in collection activity of more than 60 days.

(vi) For purposes of paragraph (b)(6)(v) of this section, the term *gap in collection activity* means, with respect to a loan, any period—

(A) Beginning on the date that is the day after—

(*1*) The date the agency paid a default claim to the lender thereon;

(*2*) The day on which the agency receives the correct address for a borrower who has made no payment in the preceding 60 days; or

(*3*) The day on which the agency completes a collection activity as defined in § 682.411(k) (1) through (3) (with references to "the lender" therein understood to mean "the agency"); and

(B) Ending on the date of the earliest of—

(*1*) The day on which the agency receives the first subsequent payment;

(*2*) The day on which the agency begins the first subsequent collection activity as defined in § 682.411(k) (1) through (3) (with references to the "lender" understood to mean "the agency"); or

(*3*) The last day of the period described in paragraph (b)(6)(iv) of this section.

(vii) 181–545 days:

(A) Except as provided in paragraphs (b)(6)(vii) (B), (C), and (D) of this section during this period, but not sooner than 30 days after sending the notice described in paragraph (b)(5)(vi) of this section, the agency shall institute a civil suit against the borrower for repayment of the loan.

(B) Except as provided in paragraph (b)(6)(vii)(C) of this section, in the case of a loan that was assigned to the Secretary prior to the 545th day and returned to the agency less than 180 days prior to the 545th day, the agency has 180 days from the date it receives the returned loan to institute the civil suit.

(C) Except as provided in paragraph (b)(6)(vii)(D) of this section, in the case of a loan not assigned to the Secretary, during this period, but not sooner than 30 days after sending the final notice described in paragraph (b)(6) (iv) of this section, the agency shall institute a civil suit against the borrower by the 225th day unless that loan is subsequently assigned to the Secretary by the deadline for the next available opportunity to collect by Internal Revenue Service (IRS) tax refund offset, or a payment is received from the borrower fewer than 120 days before the deadline for the next available opportunity to collect by IRS tax refund offset.

(D) The agency need not file suit if the agency determines and documents in the borrower's file that—

(*1*) The cost of litigation would exceed the likely recovery if litigation was begun; or

(*2*) The borrower does not have the means to satisfy a judgment on the debt or a substantial portion there of.

(viii)(A) If as a result of a determination made pursuant to paragraph (B)(6)(vii)(D)(*2*) of this section the agency does not institute a civil suit against the borrower for repayment of the loan, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy a judgment on the debt or a substantial portion thereof.

(B) If the agency determines that the borrower has acquired the means to satisfy at least a substantial portion of the debt and that the cost of litigation would not exceed the amount likely to be obtained if litigation were begun, then, if subsequent collection efforts are not successful, the agency, no later than 60 days after the determination, shall institute a civil suit against the borrower for repayment of the loan.

(C) The guaranty agency shall document in the borrower's file determinations made pursuant to this paragraph.

(ix)(A) The agency shall attempt diligently to enforce a judgment obtained against a borrower on a loan and shall ensure that the judgment is renewed as permitted by applicable law. If, despite diligent attempts, the agency cannot recover the full amount of the judgment because the borrower lacks sufficient assets or income attachable under applicable law to fully satisfy the judgment, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired sufficient attachable assets or income to satisfy the remainder of the judgment.

(B) If the agency determines that the borrower has acquired sufficient attachable assets or income to satisfy the remainder of the judgment and that the cost of enforcing the judgment would not exceed the likely recovery, the agency, not later than 60 days thereafter, shall notify the borrower in writing of its intention to resume enforcement efforts on the judgment unless the borrower makes payment in full of all outstanding amounts.

(C) If the borrower does not make payment in full within 30 days of the date the agency sends the notice described in paragraph (b)(6)(ix)(B) of this section, the agency, within 30 days thereafter, shall proceed to enforce the remainder of the judgment.

(x) The agency may discontinue conducting the semi-annual inquiries concerning a borrower's means required by paragraphs (b)(6) (viii) and (ix) of this section only in accordance with criteria and procedures approved by the Secretary.

(xi) Notwithstanding paragraphs (b)(6)(vii)–(x) of this section, the agency shall file a civil suit against the borrower for repayment of the loan, and shall enforce a judgment obtained thereon unless the agency—

(A) Determines and documents in the borrower's file that the cost of litigation would exceed the judgment amount likely to be obtained if litigation were begun, or, in the case of a proceeding to enforce a judgment, that the cost of such a proceeding would exceed the likely recovery from the debtor; or

(B) Previously has discontinued semi-annual inquiries on the debt in accordance with paragraph (b)(6)(x) of this section.

(xii) Not later than 10 days after its receipt of information indicating that it

does not know the current address of a borrower on a loan on which the agency has neither declined to sue under paragraph (b)(6)(vii)(D) of this section nor discontinued semi-annual inquiries under paragraph (b)(6)(x) of this section, or the 60th day after its payment of a default claim on the loan, whichever is later, the agency shall attempt diligently to locate the borrower through the use of all available skip-tracing techniques, including, but not limited to, any skip-tracing assistance available from the IRS, credit bureaus, and State motor vehicle departments.

(7) *Alternative collection procedures for defaulted loans.* (i) A guaranty agency may engage in the following collection activities in lieu of the activities described in paragraphs (b)(6)(iii)–(vi) of this section. The regulations in paragraphs (b)(6)(ii) (A) and (B) of this section apply to the periods of time set forth in paragraphs (b)(7)(iii)–(v) of this section.

(ii) Upon receipt of a payment from a borrower, the agency is not required to follow the specific collection efforts described in paragraphs (b)(7)(iii)–(vi) of this section but shall diligently attempt to collect the loan for 60 days following receipt of the payment. If the agency receives no payments during the 60-day period, the agency shall resume its use of the collection efforts described in paragraphs (b)(7)(iii)–(vi) of this section, treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(7)(iv) of this section.

(iii) 1–30 days: During this period the agency shall send to the borrower the written notice described in paragraph (b)(5)(ii) of this section.

(iv)(A) 31–180 days: During this period the guaranty agency shall attempt diligently to collect the loan using such collection tools and activities as it deems appropriate, provided, however, that the agency must make at least one diligent effort to contact the borrower by telephone, as defined in § 682.411(l) (with references to "the lender" understood to mean "the agency"), and send at least two forceful collection letters to the borrower.

(B) By the end of this period or the 30th day after the Secretary's return of the loan to the agency upon completion of the first Federal tax refund offset process available for that loan, whichever is later, the agency shall refer the loan to a collection contractor in accordance with paragraph (b)(7)(iv)(C) of this section.

(C) The collection contractor to whom the agency refers a loan under paragraph (b)(7)(iv)(B) of this section must—

(1) Be compensated for its services on all FFEL loans referred by the agency solely on a contingency fee basis;

(2) Be one of at least two collection contractors simultaneously providing collection services to the agency on FFEL loans under a competitive system that the agency has established and that includes the periodic assessment by the agency of the performance of the competing contractors and periodic adjustments in the volume of loans referred by the agency to each competing contractor based on those assessments; and

(3) Not receive referral of more than 70 percent of the agency's referred loans in any calendar year.

(v) Notwithstanding the deadline for instituting a civil suit set forth in paragraph (b)(6)(vii) of this section, an agency that uses the procedures in paragraphs (b)(7)(i)–(iv) of this section shall institute a civil suit required by that paragraph prior to the earliest of—

(A) The 90th day following the collection contractor's return of the loan to the agency; or

(B) The 365th day following the later of the agency's referral of the loan to the collection contractor, or the contractor's receipt of a payment on the loan.

(8) *Special conditions for agency payment of a claim.* (i) A guaranty agency may adopt a policy under which it pays a claim to a lender on a loan under the conditions described in § 682.509(a)(1).

(ii) Upon the payment of a claim under a policy described in paragraph (b)(8)(i) of this section, the guaranty agency shall—

(A) Perform the loan servicing functions required of a lender under § 682.208, except that the agency is not required to follow the credit bureau reporting requirements of that section;

(B) Perform the functions of the lender during the repayment period of the loan, as required under § 682.209;

(C) If the borrower is delinquent in repaying the loan at the time the agency pays a claim thereon to the lender or becomes delinquent while the agency holds the loan, exercise due diligence in accordance with § 682.411 in attempting to collect the loan from the borrower and any endorser or co-maker; and

(D) After the date of default on the loan, if any, comply with paragraph (b)(6)(i) of this section with respect to collection activities on the loan, with the date of default treated as the claim payment date for purposes of those paragraphs.

(9) *Preemption of State law.* The provisions of paragraphs (b) (2), (5), (6), and (7) of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements of these provisions.

(c) *Enforcement requirements.* A guaranty agency shall take such measures and establish such controls as are necessary to ensure its vigorous enforcement of all Federal, State, and guaranty agency requirements, including agreements, applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews, using statistically valid techniques to calculate liabilities to the Secretary that each review indicates may exist, of at least—

(i)(A) Each participating lender whose dollar volume of FFEL loans made or held by the lender and guaranteed by the agency in the preceding year—

(1) Equaled or exceeded two percent of the total of all loans guaranteed in that year by the agency;

(2) Was one of the ten largest lenders whose loans were guaranteed in that year by the agency; or

(3) Equaled or exceeded $10 million in the most recent fiscal year;

(B) Each lender described in section 435(d)(1)(D) or (J) of the Act that is located in any State in which the agency is the principal guarantor as defined in § 682.800(d), and, at the option of each guaranty agency, the Student Loan Marketing Association; and

(C) Each participating school, located in a State for which the guaranty agency is the principal guaranty agency, that has a cohort default rate, as defined in 34 CFR 668.15, for either of the two immediately preceding fiscal years, as defined in § 668.15, that exceeds 20 percent, unless the school is under a mandate from the Secretary under § 668.15 to take specific default reduction measures or if the total dollar amount of loans entering repayment in each fiscal year on which the default rate over 20 percent is based does not exceed $100,000; or

(ii) The schools and lenders selected by the agency as an alternative to the reviews required by paragraphs (c)(1)(A)–(C) of this section if the Secretary approves the agency's proposed alternative selection methodology.

(2) Demanding prompt repayment by the responsible parties to lenders, borrowers, the agency, or the Secretary, as appropriate, of all funds found in those reviews to be owed by the participants with regard to loans guaranteed by the agency, whether or not the agency holds the loans, and monitoring the implementation by participants of corrective actions,

including these repayments, required by the agency as a result of those reviews.

(3) Referring to the Secretary for further enforcement action any case in which repayment of funds to the Secretary is not made in full within 60 days of the date of the agency's written demand to the school, lender, or other party for payment, together with all supporting documentation, any correspondence, and any other documentation submitted by that party regarding the repayment.

(4) Adopting procedures for identifying fraudulent loan applications.

(5) Undertaking or arranging with State or local law enforcement agencies for the prompt and thorough investigation of all allegations and indications of criminal or other programmatic misconduct by its program participants, including violations of Federal law or regulations.

(6) Promptly referring to appropriate State and local regulatory agencies and to nationally recognized accrediting agencies and associations for investigation information received by the guaranty agency that may affect the retention or renewal of the license or accreditation of a program participant.

(7) Promptly reporting all of the allegations and indications of misconduct having a substantial basis in fact, and the scope, progress, and results of the agency's investigations thereof to the Secretary.

(8) Referring appropriate cases to State or local authorities for criminal prosecution or civil litigation.

(9) Promptly notifying the Secretary of—

(i) Any action it takes affecting the FFEL program eligibility of a participating lender or school;

(ii) Information it receives regarding an action affecting the FFEL program eligibility of a participating lender or school taken by a nationally recognized accrediting agency, association, or a State licensing agency;

(iii) Any judicial or administrative proceeding relating to the enforceability of FFEL loans guaranteed by the agency or in which tuition obligations of a school's students are directly at issue, other than a proceeding relating to a single borrower or student; and

(iv) Any petition for relief in bankruptcy, application for receivership, or corporate dissolution proceeding brought by or against a school or lender participating in its loan guarantee program.

(10) Cooperating with all program reviews, investigations, and audits conducted by the Secretary relating to the agency's loan guarantee program.

(11) Taking prompt action to protect the rights of borrowers and the Federal fiscal interest respecting loans that the agency has guaranteed when the agency learns that a participating school or holder of loans is experiencing problems that threaten the solvency of the school or holder, including—

(i) Conducting on-site program reviews;

(ii) Providing training and technical assistance, if appropriate;

(iii) Filing a proof of claim with a bankruptcy court for recovery of any funds due the agency and any refunds due to borrowers on FFEL loans that it has guaranteed when the agency learns that a school has filed a bankruptcy petition;

(iv) Promptly notifying the Secretary that the agency has determined that a school or holder of loans is experiencing potential solvency problems; and

(v) Promptly notifying the Secretary of the results of any actions taken by the agency to protect Federal funds involving such a school or holder.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1080a, 1082, 1091a, 1099)

§ 682.411 Due diligence by lenders in the collection of guaranty agency loans.

(a) *General.* In the event of delinquency on a FFEL programs loan, the lender shall engage in at least the collection efforts described in paragraphs (c)–(1) of this section, except that in the case of a loan made to a borrower who is incarcerated or to a borrower residing outside a State, Mexico, or Canada, the lender may send a forceful collection letter in lieu of each telephone effort required by this section.

(b) *Delinquency.* For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment which is not later made. The due date of the first payment is established by the lender but must occur no later than 45 days following the end of the grace period, or, if the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the day the lender so learns. If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment which is not later made. A payment that is within five dollars of the amount normally required to advance the due date may nevertheless advance the due date if the lender's procedures allow for that advancement.

(c) *1–10 days delinquent:* Except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan. the lender during this period shall send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

(d) *11–180 days delinquent (11–240 days delinquent for a loan repayable in installments less frequent than monthly):* (1) Unless exempted under paragraph (d)(4) of this section, during this period the lender shall engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by telephone must occur before and another one must occur after the 90th day of delinquency.

(2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may bring suit against the borrower to compel repayment of the loan

(3) Following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, the lender's receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage in only—

(i) Two diligent efforts to contact the borrower by telephone during this period, if the loan is less than 91 days delinquent (121 days delinquent for a loan repayable in installments less frequent than monthly) upon receipt of the payment, correct address, or returned check, or expiration of the deferment or forbearance; or

(ii) One diligent effort to contact the borrower by telephone if the loan is 91–120 days delinquent (121–180 days delinquent for a loan repayable in installments less frequent than monthly) upon receipt of the payment, correct address, or returned check, or expiration of the deferment of forbearance.

(4) A lender need not attempt to contact by telephone any borrower—

(i) Who is incarcerated;

(ii) Who is residing outside of a State, Mexico or Canada;

(iii) Whose telephone number is unknown;

(iv) Who is more than 120 days delinquent (180 days delinquent for a loan repayable in installments less frequent than monthly) following the lender's receipt of—

(A) A payment on the loan;

(B) A correct address for the borrower;

(C) A dishonored check received from the drawee as a payment on the loan; or

(D) The expiration of an authorized deferment or forbearance.

(5) At no point during this period may the lender permit the occurrence of a gap in collection activity, as defined in paragraph (i) of this section, of more than 45 days (60 days in the case of a transfer).

(e) *Final demand.* On or after the 151st day of delinquency, (the 211th day for loans payable in less frequent installments than monthly) the lender shall send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender shall allow the borrower at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(f) *Collection procedures when borrower's telephone number is not available.* Upon completion of a diligent but unsuccessful effort to ascertain the correct telephone number of a borrower as required by paragraph (f)(1) of this section, the lender is excused from any further efforts to contact the borrower by telephone during the delinquency period in which the unsuccessful effort was made, unless the borrower's number is obtained before the 120th day of delinquency (the 150th day for loans payable repayable in installments less frequent than monthly).

(g) *Skip-tracing.* (1) Unless the letter specified under paragraph (e) of this section has already been sent, within 10 days of its receipt of information indicating that it does not know the borrower's current address, the lender shall begin to diligently attempt to locate the borrower through the use of normal commercial skip-tracing techniques. These efforts must include, but are not limited to, making a diligent effort to contact each endorser, relative, reference, and individual and entity identified in the borrower's loan file. For this purpose, a lender's contact with a school official who might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator identified on the loan application. These efforts must be completed by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities.

(2) Upon receipt of information indicating that it does not know the borrower's current address, the lender shall discontinue the collection efforts described in paragraphs (c)–(e) of this section.

(3) If the lender is unable to ascertain the borrower's current address despite its performance of the activities described in paragraph (g)(1) of this section, the lender is excused thereafter from performance of the collection activities described in paragraphs (c)–(e) and (k) of this section unless it receives communication indicating the borrower's address before the 151st day of delinquency (the 211th day for loans payable in less frequent installments than monthly).

(4) The activities specified by paragraphs (l)(1)(A) or (B) of this section (with references to "the borrower" understood to mean endorser, reference, relative, individual or entity as appropriate) meet the requirement that the lender make a diligent effort to contact each individual identified in the borrower's loan file.

(h) *Preclaims assistance.* The lender shall request preclaims assistance from the agency that guaranteed the loan within 10 days before or after the date established by the agency that assistance is first available from the agency.

(i) *Gap in collection activity.* For purposes of this section, the term "gap in collection activity" means, with respect to a loan, any period—

(1) Beginning on the date that is the day after—

(i) The due date of a payment unless the lender does not know the borrower's address on that date;

(ii) The day on which the lender receives a payment on a loan that remains delinquent notwithstanding the payment;

(iii) The day on which the lender receives the correct address for a delinquent borrower;

(iv) The day on which the lender completes a collection activity;

(v) The day on which the lender receives a dishonored check submitted as a payment on the loan;

(vi) The expiration of an authorized deferment or forbearance period on a delinquent loan; or

(vii) The day the lender receives information indicating it does not know the borrower's current address; and

(2) Ending on the date of the earliest of—

(i) The day on which the lender receives the first subsequent payment or completed deferment request or forbearance agreement;

(ii) The day on which the lender begins the first subsequent collection activity; or

(iii) Default.

(j) *Transfer.* For purposes of this section, the term "transfer" with respect to a loan means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

(k) *Collection activity.* For purposes of this section, the term "collection activity" with respect to a loan means—

(1) Mailing or otherwise transmitting to the borrower at an address that the lender reasonably believes to be the borrower's current address a collection letter or final demand letter that satisfies the timing and content requirements of paragraphs (c), (d), or (e) of this section;

(2) Making an attempt to contact the borrower by telephone to urge the borrower to begin or resume repayment;

(3) Conducting skip-tracing efforts, in accordance with paragraph (g) of this section, to locate a borrower whose correct address is unknown to the lender;

(4) Mailing or otherwise transmitting to the guaranty agency a request for preclaims assistance available from the agency on the loan at the time the request is transmitted; or

(5) Any telephone discussion or personal contact with the borrower so long as the borrower is apprised of the account's past-due status.

(l) *"Diligent effort" for telephone contact.* (1) For purposes of this section, the term "diligent effort" with respect to telephone contact means—

(i) A successful effort to contact the borrower by telephone;

(ii) At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number; or

(iii) An unsuccessful effort to ascertain the correct telephone number of a borrower, including, but not limited to, a directory assistance inquiry as to the borrower's telephone number, and a diligent effort to contact each reference, relative, and individual identified in the most recent loan application for that borrower held by the lender. The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower's address.

(2) If the lender is unable to ascertain the borrower's correct telephone number despite its performance of the activities described in paragraph (l)(1)(iii) of this section, the lender is excused thereafter from attempting to

contact the borrower by telephone unless it receives a communication indicating the borrower's current address before the 120th day of delinquency (the 150th day for loans repayable in installments less frequent than monthly).

(3) The activities specified by paragraphs (l)(1)(i) or (ii) of this section (with references to "the borrower" understood to mean endorser, reference, relative or individual as appropriate), meet the requirement that the lender make a diligent effort to contact each endorser or each reference, relative or individual identified on the borrower's most recent loan application.

(m) *Due diligence for endorsers.* (1) During the delinquency period the lender shall—

(i) Make a diligent effort to contact the endorser by telephone; and

(ii) Send the endorser on the loan two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan with at least one letter containing the information described in paragraph (d)(2) of this section (with references to "the borrower" understood to mean the endorser).

(2) On or after the 151st day of delinquency, (the 211th day for loans payable in less frequent installments than monthly) the lender shall send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to a national credit bureau. The lender shall allow the endorser at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan current before filing a default claim on the loan.

(3) Unless the letter specified under paragraph (m)(2) of this section has already been sent, upon receipt of information indicating that it does not know the endorser's current address or telephone number, the lender must diligently attempt to locate the endorser through the use of normal commercial skip-tracing techniques. This effort must include an inquiry to directory assistance.

(n) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1080a, 1082, 1087–1)

§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send to the borrower a final demand letter meeting the requirements of § 682.411(e) when it learns and can substantiate that the borrower or the student on whose behalf a parent has borrowed, without the lender or school's knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the student or borrower—

(1) To be ineligible for all or a portion of a loan made under this part;

(2) To receive a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301 for which he or she was ineligible; or

(3) To receive loan proceeds for a period of enrollment from which he or she has withdrawn or been expelled prior to the first day of classes or during which he or she failed to attend school and has not paid those funds to the school or repaid them to the lender.

(b) The lender shall neither bill the Secretary for nor be entitled to interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter transmitted under paragraph (a) of this section, the lender shall demand that within 30 days the borrower repay in full the principal amount of the ineligible portion of the loan, accrued interest thereon, and all special allowance paid by the Secretary thereon up through the most recently ended quarter.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall—

(1) On its next quarterly interest billing submitted under § 682.305, refund to the Secretary the interest benefits and special allowance repaid by the borrower and all other interest benefits and special allowance previously paid by the Secretary on the ineligible portion of the loan; and

(2) Treat that payment of the principal amount of the ineligible portion of the loan as a prepayment of principal.

(e) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the lender shall treat the entire loan as in default, and—

(1) With its next quarterly interest billing submitted under § 682.305, refund to the Secretary the amount of the interest benefits received from the Secretary on the ineligible portion of the loan, whether or not repaid by the borrower; and

(2) Within the time specified in § 682.406(a)(5), file a default claim thereon with the guaranty agency for the entire unpaid balance of principal and accrued interest.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

§ 682.413 Remedial actions.

(a) The Secretary requires a lender to repay interest benefits and special allowance received on a loan guaranteed by a guaranty agency—

(1) For any period beginning on the date of a failure by the lender, with respect to the loan, to comply with any of the requirements set forth in §§ 682.406(a)(1)–(a)(6), (a)(9), and (a)(12);

(2) For any period beginning on the date of the lender's failure, with respect to the loan, to meet a condition of guarantee coverage established by the guaranty agency, to the date, if any, on which the guaranty agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(3) For any period in which the lender, with respect to the loan, violates the requirements of Subpart C of this part; and

(4) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under § 682.302(d).

(b) The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender or the agency failed to meet the requirements of § 682.406(a).

(c) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guaranty agency that makes an incomplete or incorrect statement in connection with any agreement entered into under this part or violates any applicable Federal requirement:

(1) Require the agency to return payments made to the agency.

(2) Withhold payments to the agency.

(3) Limit the terms and conditions of the agency's continued participation in the FFEL programs.

(4) Suspend or terminate agreements with the agency.

(5) Impose a fine on the agency.

(6) Require repayment from the agency of interest, special allowance, and reinsurance paid on Consolidation loan amounts attributed to Consolidation loans that violate § 682.206(f)(1).

(7) Require repayment from the agency of any related payments that the Secretary became obligated to make to

others as a result of the incomplete or incorrect statement or violation of applicable Federal requirement.

(d)(1) The Secretary follows the procedures described in 34 CFR part 668, subpart G, applicable to fine proceedings against schools, in imposing a fine against a lender or guaranty agency. References to "the institution" in those regulations shall be understood to mean the lender or guaranty agency, as applicable, for this purpose.

(2) The Secretary also follows the provisions of section 432(g) of the Act in imposing a fine against a guaranty agency or a lender.

(e)(1) The Secretary's decision to require repayment of funds, withhold funds, or to limit, suspend, or terminate a lender or agency from participation in the FFEL programs does not become final until the Secretary provides the lender or agency with written notice of the intended action and an opportunity to be heard thereon, at a time and in a manner the Secretary determines to be appropriate to the resolution of the issues on which the lender or guaranty agency requests an opportunity to be heard.

(2)(i) The Secretary may withhold payments from an agency or suspend an agreement with an agency prior to giving notice and an opportunity to be heard if the Secretary finds that emergency action is necessary to prevent substantial harm to Federal interests.

(ii) The Secretary follows the notice and show cause procedures described in § 682.704 applicable to emergency actions against lenders in taking an emergency action against a guaranty agency.

(3) The Secretary follows the procedures in 34 CFR 30.20–30.32 in collecting a debt by offset against payments otherwise due a guaranty agency or lender.

(f) Notwithstanding paragraphs (a)–(e) of this section, the Secretary may waive the right to require repayment of funds by a lender or agency if in the Secretary's judgment the best interests of the United States so require. The Secretary's waiver policy for violations of § 682.406(a)(3) or (a)(5) is set forth in appendix D to this part.

(g) The Secretary's final decision to require repayment of funds or to take other remedial action, other than a fine, against a lender or guaranty agency under this section is conclusive and binding on the lender or agency.

Note: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321–322.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1, 1097)

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) *Records.* (1)(i) The guaranty agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days.

(ii) The agency shall maintain—

(A) All documentation supporting the claim filed by the lender;

(B) Notices of changes in a borrower's address;

(C) A payment history showing the date and amount of each payment received from or on behalf of the borrower by the guaranty agency, and the amount of each payment that was attributed to principal, accrued interest, and collection costs and other charges, such as late charges;

(D) A collection history showing the date and subject of each communication between the agency and the borrower or endorser relating to collection of a defaulted loan, each communication between the agency and a credit bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time, and each request by the lender for preclaims and supplemental preclaims assistance on the loan;

(E) Documentation regarding any wage garnishment actions initiated by the agency on the loan;

(F) Documentation of any matters relating to the collection of the loan by tax-refund offset; and

(G) Any additional records that are necessary to document its right to receive or retain payments made by the Secretary under this part and the accuracy of reports it submits to the Secretary.

(2) The guaranty agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary due to the borrower's death or permanent and total disability, or discharge of the loan in bankruptcy.

(3)(i) The guaranty agency shall require a participating lender to maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(3)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status.

(ii) The lender shall keep—

(A) A copy of the loan application;

(B) A copy of the signed promissory note, including the repayment instrument;

(C) The repayment schedule;

(D) A record of each disbursement of loan proceeds;

(E) Notices of changes in a borrower's address and status as at least a half-time student;

(F) Evidence of the borrower's eligibility for a deferment;

(G) The documents required for the exercise of forbearance;

(H) Documentation of the assignment of the loan;

(I) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs;

(J) A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan, each communication other than regular reports by the lender showing that an account is current, between the lender and a credit bureau regarding the loan, each effort to locate a borrower whose address is unknown at any time, and each request by the lender for preclaims assistance on the loan; and

(K) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(iii) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary or the guaranty agency may require the retention of records beyond this minimum period.

(4) (i) A guaranty agency or lender may store the records specified in paragraphs (a)(3)(ii)(C)–(K) of this section on microfilm, optical disk, or other machine readable format.

(ii) A lender or guaranty agency holding a promissory note shall retain the original note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency shall either return the original note to the borrower or notify the borrower under an alternate procedure that is

acceptable under State law that the loan is paid in full, and retain a copy for the prescribed period.

(iii) Either the lender or guaranty agency shall retain the original loan application and, until the loan is fully repaid, the promissory note.

(b) *Reports.* A guaranty agency shall accurately complete and submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program at the time and in the manner that the Secretary may reasonably require. The Secretary does not pay the agency any funds, the amount of which are determined by reference to data in the report, until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories of originating lenders on all loans guaranteed after December 31, 1980:

(i) Schools.

(ii) State or private nonprofit lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, and credit unions).

(iv) All other types of lenders.

(3) By July 1 of each year, a report on—

(i) Its eligibility criteria for schools and lenders;

(ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) Any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency's program; and

(iv) The steps the agency has taken to ensure its compliance with § 682.410(c), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) Information consisting of those extracts from its computer data base, and supplied in the medium and the format, prescribed in the Stafford, SLS, and PLUS Loan Tape Dump Procedures (ED Forms 1070 and 1071).

(5) Any other information concerning its loan insurance program requested by the Secretary.

(c) *Inspection requirements.* Upon request, a guarantee agency or its agent shall cooperate with an independent auditor, the Secretary, the Department's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs and records; and

(2) Providing reasonable access to the agency's personnel associated with the agency's administration of its loan insurance program for the purpose of obtaining relevant information. In providing reasonable access, the agency shall not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel without the presence of agency representatives; and

(iii) Refuse to permit interviews with those personnel unless they are recorded by the agency.

(3) A guaranty agency shall require in its agreement with a lender or in its published rules or procedures that the lender or its agent give the Secretary or the Secretary's designee and the guaranty agency access to the lender's records for inspection and copying in order to verify the accuracy of the information provided by the lender pursuant to § 682.401(b) (19) and (20), and the right of the lender to receive or retain payments made under this part, or to permit the Secretary or the agency to enforce any right acquired by the Secretary or the agency under this part.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

Subpart E—Federal Guaranteed Student Loan Programs

§ 682.500 Circumstances under which loans may be guaranteed by the Secretary.

(a) The Secretary may guarantee all—

(1) FISL, Federal SLS, and Federal PLUS loans made by lenders located in a State in which no State or private nonprofit guaranty agency has in effect an agreement with the Secretary under § 682.401 to serve as guarantor in that State;

(2) Federal Consolidation loans made by the Student Loan Marketing Association and Federal Consolidation loans made by any other lender that has applied for and been denied guarantee coverage on Consolidation loans by the guaranty agency that guarantees the largest dollar volume of FFEL loans made by the lender; and

(3) FISL, Federal SLS, Federal PLUS, and Federal Consolidation loans made by lenders located in a State in which a guaranty agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may guarantee FISL, Federal SLS, Federal PLUS and Federal Consolidation loans made by a lender located in a State where a guaranty agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only for—

(1) A student who does not meet the agency's residency requirements;

(2) A lender who is not able to obtain a guarantee from the guaranty agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements;

(3) With the approval of the guaranty agency, a student who has previously received from the same lender a FISL loan that has not been repaid; or

(4) All students at a school located in the State if the Secretary finds that—

(i) No single guaranty agency program is reasonably accessible to students at that school as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school would significantly increase the access of students at that school to FFEL Program loans. The Secretary may guarantee loans made to those students by a lender in that State if—

(A) The guaranty agency does not recognize the school as being eligible, but the school is eligible under the FISL program; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISL loans but are not recognized as eligible under the guaranty agency program.

(c) For purposes of paragraph (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has an origination relationship with the school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for guaranteeing loans under the Federal FFEL programs, the Secretary may require the lender to submit evidence of circumstances that would justify loan guarantees under the provisions of this section.

(e) With regard to a school lender that has entered into an agreement with the Secretary under § 682.600, the Secretary denies loan guarantees on the basis of this section only if the Secretary first

determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys that the Secretary considers satisfactory.

(Authority: 20 U.S.C. 1071, 1073, 1078–1, 1078–2, 1078–3, 1082)

§ 682.501 Extent of Federal guarantee under the Federal GSL programs.

(a) *General.* Except as provided in paragraph (b) of this section, the Secretary's guarantee liability on any Federal GSL loan is 100 percent of the unpaid principal balance and, to the extent permitted under § 682.512, accrued interest.

(b) *Special provisions for State lenders.* (1) Except as described in paragraph (b)(2) of this section, the Secretary's guarantee liability is less than 100 percent under the following conditions:

(i) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches five percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches nine percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 80 percent of the amount of the unpaid principal balance plus accrued interest.

(iii) For purposes of this paragraph, the total default claims paid by the Secretary during any fiscal year do not include paid claims filed by the lender under the provisions of § 682.412(e) or § 682.509.

(2) The potential reduction in guarantee liability does not apply to a State lender during the first Federal fiscal year of its operation as a Federal GSL Program lender and during each of the four succeeding fiscal years.

(3) For the purposes of this section, the term "amount of the Federal GSL loans in repayment" means the original principal amount of all loans guaranteed by the Secretary less—

(i) The original principal amount of loans on which—

(A) Under the FISL program, the borrower has not yet reached the repayment period;

(B) Payment in full has been made by the borrower;

(C) The borrower was in deferment status at the time repayment of principal was scheduled to begin and remains in deferment status; or

(D) The Secretary has paid a claim filed under section 437 of the Act; and

(ii) The amount paid by the Secretary for default claims on loans, exclusive of paid claims filed by the lender under § 682.412(e) or § 682.509.

(4) For the purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(5) State lenders shall consolidate Federal GSL loans for the purpose of calculating the amount of the Secretary's guarantee liability under this section.

(Authority: 20 U.S.C. 1077, 1078–1, 1078–2, 1078–3, 1082)

§ 682.502 The application to be a lender.

(a) To be considered for participation in the Federal GSL programs, a lender shall submit an application to the Secretary.

(b) In determining whether to enter into a guarantee agreement with an applicant, and, if so, what the terms of the agreement will be, the Secretary considers—

(1) Whether the applicant meets the definition of an "eligible lender" in section 435(d) of the Act and the definition of "lender" in § 682.200;

(2) Whether the applicant is capable of complying with the regulations in this part as they apply to lenders;

(3) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting loans;

(4) Whether the applicant has had prior experience with a similar Federal, State, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(5) The financial resources of the applicant; and

(6) In the case of a school that is seeking approval as a lender, its accreditation status.

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may fairly evaluate it in accordance with the criteria in this section.

(d)(1) If the Secretary decides not to approve the application for a guarantee agreement, the Secretary's response includes the reason for the decision.

(2) The Secretary provides the lender an opportunity for the lender to meet with a designated Department official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial or grant the lender an opportunity to appeal if the lender submits its application within six months of a previous denial.

(Authority: 30 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.503 The guarantee agreement.

(a)(1) To participate in the Federal GSL programs, a lender must have a guarantee agreement with the Secretary. The Secretary does not guarantee a loan unless it is covered by such an agreement.

(2) In general, under a guarantee agreement the lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender in the Federal GSL programs. In return, the Secretary agrees to guarantee each eligible Federal GSL loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary may include in an agreement a limit on the duration of the agreement and the number or amount of Federal GSL loans the lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, a guarantee agreement with a school lender limits the Federal GSL loans made by that school lender that will be covered by the Federal guarantee to those loans made to students, or to parents borrowing on behalf of students, who are—

(i) In attendance at that school;

(ii) In attendance at other schools under the same ownership as that school; or

(iii) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for loan guarantees.

(2) The Secretary may on a school-by-school basis impose limits under paragraph (b)(1)(iii) of this section on a school lender that makes loans to students or to parents of students in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees, of those other schools.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.504 Issuance of Federal loan guarantees.

(a) A lender having a guarantee agreement shall submit an application to the Secretary for a Federal loan guarantee on each intended loan that the lender determines to be eligible for a guarantee. The application must be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan will be guaranteed and of the amount of the guarantee. No disbursement on a loan made prior to the Secretary's approval of that loan is covered by the guarantee.

(b) The Secretary issues a guarantee on a Federal GSL loan in reliance on the implied representations of the lender that all requirements for the initial eligibility of the loan for guarantee coverage have been met. As described in § 682.513, the continuance of the guarantee is conditioned upon compliance by all holders of the loan with the regulations in this part.

(Authority: 20 U.S.C., 1078–1, 1078–2, 1078–3. 1079, 1082)

§ 682.505 Insurance premium.

(a) *General.* The Secretary charges the lender an insurance premium for each Federal GSL Program loan that is guaranteed, except that no insurance premium is charged on a Federal Consolidation loan, or on a Federal SLS or Federal PLUS loan made under § 682.209(f).

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

FISL loans—insurance premium calculation. (1) The insurance premium for FISL loans is calculated by—

(i) Counting the number of months beginning with the month following the month in which each disbursement on the loan is to be made and ending 12 months after the borrower's anticipated graduation from the school for attendance at which the loan is sought;

(ii) Dividing one-fourth of one percent of the principal amount of the loan by 12; and

(iii) Multiplying the result obtained in paragraph (c)(1)(i) of this section by that obtained in paragraph (c)(1)(ii) of this section.

(2) If the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) *PLUS and SLS Loans—insurance premium calculation.* The insurance premium for a Federal PLUS or SLS loan is calculated by—

(1) Using the projected repayment period as a base;

(2) Amortizing the loan in equal monthly installments over the repayment period;

(3) Determining one-fourth of one percent of each monthly declining principal balance; and

(4) Computing the total of monthly amounts calculated under paragraph (d)(3) of this section.

(e) *Collection from lenders.* (1) The Secretary may bill the lender for the insurance premium or may require the lender to pay the insurance premium to the Secretary at the time of disbursement of the loan. At the Secretary's discretion, the Secretary may alternatively collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) The Secretary's guarantee on a loan ceases to be effective if the lender fails to pay the insurance premium within 60 days of the date payment is due. However, the Secretary may excuse late payment of an insurance premium and reinstate the guarantee coverage on a loan if the Secretary is satisfied that at the time the premium is paid—

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

Collection from borrowers. The lender may pass along the cost of the insurance premium to the borrower. If it does so, the insurance premium must be deducted from each disbursement of the loan in an amount proportionate to that disbursement's contribution to the premium amount.

(g) *Refund provisions.* The insurance premium is not refundable by the Secretary and need not be refunded by the lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition in bankruptcy.

(Authority: 20 U.S.C. 1077, 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.506 Limitations on maximum loan amounts.

(a) The Secretary does not guarantee a FISL, Federal SLS, or Federal PLUS loan in an amount that would—

(1) Result in an annual loan amount in excess of the student's estimated cost of attendance for the period of enrollment for which the loan is intended less—

(i) The student's estimated financial assistance; and

(ii) The student's expected family contribution for that period, in the case of a FISL loan; or

(2) Result in an annual or aggregate loan amount in excess of the permissible annual and aggregate loan limits described in § 682.204.

(b) The Secretary does not guarantee a Federal Consolidation loan in an amount greater than that required to discharge loans eligible for consolidation under § 682.100(a)(4).

(Authority: 20 U.S.C. 1075, 1077, 1078–1, 1078–2, 1079, 1082, 1089)

§ 682.507 Due diligence in collecting a loan.

(a) *General.* (1) Except as provided in paragraph (a)(4) of this section, a lender shall exercise due diligence in the collection of a loan with respect to both a borrower and an authorized endorser. In order to exercise due diligence, a lender shall implement the procedures described in this section if a borrower fails to make an installment payment when due.

(2) If two borrowers are liable for repayment of a Federal PLUS loan as co-makers, the lender shall follow these procedures with respect to both borrowers.

(3) For purposes of this section, the borrower's delinquency begins on the day after the due date of an installment payment not paid when due, except that if the borrower entered the repayment period without the lender's knowledge, the delinquency begins 30 days after the day the lender receives notice that the borrower has entered the repayment period.

(4) In lieu of the procedures described in this section, a lender may use the due diligence procedures in § 682.411 in collecting a Federal GSL loan.

(b) *Initial delinquency.* If a borrower is delinquent in making a payment, the lender shall remind the borrower within 10 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender shall attempt to contact the borrower—

(1) At last six more times at regular intervals during the remainder of the six-month period that started on the date of delinquency for loans repayable in monthly installments; or

(2) At least eight more times during the remainder of the eight-month period that started on the date of delinquency for loans repayable in installments less frequent than monthly.

(c) *Skip-tracing assistance.* (1) If a lender does not know the borrower's

current address, the lender promptly shall attempt to locate the borrower through normal commercial collection activities, including contacting all individuals and entities named in the borrower's loan application. If these efforts are unsuccessful, the lender promptly shall attempt to learn the borrower's current address through use of the Department's skip-tracing assistance.

(2) If the lender does not know the borrower's address when a borrower is first delinquent in making a payment, but subsequently obtains the borrower's address prior to the date on which the loan goes into default, the lender shall attempt to contact the borrower in accordance with paragraph (b) of this section, with the first contact occurring within 15 days of the date the lender obtained knowledge of the borrower's address, and shall attempt to contact the borrower at least once during each succeeding 30-day period until default.

(d) *Preclaims assistance.* When the borrower is 60 days delinquent in making a payment, the lender shall request preclaims assistance from the Department of Education. This preclaims assistance consists of sending a series of letters to the borrower, urging the borrower to contact the lender and begin or resume payments.

(e) *Final demand letter.* A lender shall send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender shall allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown to the lender.

(f) *Litigation.* (1) If a loan is in default and the lender determines that the borrower or an endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and interest, together with reasonable attorneys' fees, late charges, and court costs.

(2) Prior to bringing suit the lender shall—

(i) Obtain the Secretary's approval; and

(ii) Notify the borrower or endorser in writing that it has received the Secretary's approval to bring suit on the loan, and that unless the borrower or endorser makes payments sufficient to bring the account out of default the lender will seek a judgment under which the borrower or endorser will be liable for payment of late charges, attorneys' fees, collection agency charges, court costs, and other reasonable collection costs in addition to the unpaid principal and interest on the loan. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(3) The lender may bring suit if the borrower or endorser does not make payments sufficient to bring the account out of default within 10 days following the date of delivery of the notice described in paragraph (f)(2)(ii) of this section to the borrower or endorser indicated on the receipt.

(4) A lender may first apply the proceeds of any judgment against its attorneys' fees, court costs, collection agency charges, and other reasonable collection costs, whether or not the judgment provides for these fees and costs.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1081, 1082, 1085)

§ 682.508 Assignment of a loan.

(a) *General.* A Federal GSL loan may not be assigned except to another eligible lender. For the purpose of this paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(b)(1) *Procedure.* If the assignment of a FISL Program loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and the assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide separate notices to the borrower of—

(i) The assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party to whom subsequent payments must be sent; and

(iv) The telephone numbers of both the assignor and the assignee.

(2) The assignor and assignee shall provide the notice required by paragraph (b)(1) of this section separately. Each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(c) *The Secretary's approval.* The approval of the Secretary is required prior to the assignment of a note to an eligible lender that has not entered into a contract of insurance with the Secretary under § 682.503.

(d) *Warranty.* (1) Nothing in this section precludes the buyer of a loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of guaranteed loss, if any, on a claim filed on the loan.

(2) The warranty may cover only reductions that are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters the buyer is responsible for under the regulations in this part.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

§ 682.509 Special conditions for filing a claim.

(a) A lender shall cease collection activity on a loan and file a claim with the Secretary within the time specified in § 682.511(e)(3), if—

(1) In the case of a loan that was not made or originated by the school, the lender learns that while the student was enrolled at the school the school terminated its teaching activities for that student during the academic period covered by the loan; or

(2) The Secretary directs that the claim be filed.

(b) A lender may not as a result of a claim filed with the Secretary under this section report a borrower's loan as in default to any credit bureau or other third party.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

§ 682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.

(a) The procedures in § 682.402(a)–(d) for determining whether a borrower has died, become totally and permanently disabled, or filed a bankruptcy petition apply to the Federal GSL programs.

(b) For purposes of this section, references to the "guaranty agency" in § 682.402(d)(5) shall be understood to refer to the Secretary.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1082, 1087)

§ 682.511 Procedures for filing a claim.

(a) *Filing a claim application.* (1) A lender may file a claim against the Secretary's guarantee on a Federal GSL loan for any of the following reasons:

(i) The loan is in default, as defined in § 682.200.

(ii) Any of the conditions exist for filing a claim without collection efforts, as set forth in § 682.412(e)(2) or § 682.509.

(iii) The borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, as determined by the lender in accordance with § 682.510.

(2) If a Federal PLUS loan was obtained by two eligible parents as co-makers, the reason for filing a claim must hold true for both parents.

(3) A lender may file a claim against the Secretary's guarantee only on a form provided by the Secretary. The lender

shall attach to the claim all documents required by the Secretary. If the lender fails to do so, the Secretary denies the claim.

(b) *Documentation required for claims.* (1) The Secretary requires a lender to submit the following documentation with all claims:

(i) The original promissory note.

(ii) The loan application.

(iii) The repayment instrument.

(iv) A payment history, as described in § 682.414(a)(3)(ii)(I).

(v) A collection history, as described in § 682.414(a)(3)(ii)(J).

(vi) A copy of the final demand letter if required by § 682.507(e).

(vii) The original or a copy of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan, whether that correspondence involved the original lender, a subsequent holder, or a servicing agent.

(viii) If applicable, evidence of the lender's requests to the Department for skip-tracing assistance under § 682.507(c) and for preclaims assistance under § 682.507(d).

(ix) Any additional documentation that the Secretary determines is relevant to a claim.

(2) The documentation requirements for death, total and permanent disability, or bankruptcy claims in § 682.402(e)(1) apply to the Federal GSL programs. For purposes of this section, references to the "guaranty agency" in § 682.402(e)(1) mean the Secretary.

(c) *Assignment of note.* The Secretary's payment of a claim is contingent upon receipt from the lender of an assignment to the United States of America of all rights, title, and interest of the lender in the note underlying the claim.

(d) *Bankruptcy subsequent to default.* If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. Under these circumstances the lender shall not file a proof of claim with the bankruptcy court.

(e) *Claim filing deadlines.* To obtain payment of a claim, a lender shall comply with the following deadlines:

(1) *Default claims.* Unless the lender has already filed suit against the borrower in accordance with § 682.507(f), it shall file a default claim on a loan with the Secretary within 90 days after a default has occurred on the loan. For a claim filed by a lender pursuant to § 682.412(e)(2), as directed in § 682.208(f)(2), the lender shall file a claim within 90 days following transmission of the final demand letter sent pursuant to § 682.411(e) if the borrower failed to comply with the terms of the letter within 30 days of the transmission.

(2) *Death, total and permanent disability, or bankruptcy claims.* The claim filing deadlines in § 682.402(e)(2) apply to the Federal GSL programs. For purposes of this section, references to the "guaranty agency" in § 682.402(e)(2) mean the Secretary.

(3) *Special condition claims.* In the case of a special condition claim filed pursuant to § 682.509, the lender shall file a claim with the Secretary within 45 days of the date the lender determines that the conditions set forth in § 682.509(a)(1) exist, or the date the Secretary directs that the claim be filed pursuant to § 682.509(a)(2).

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1080, 1082, 1087)

§ 682.512 Determination of amount payable on a claim.

(a) *Default claims.* (1) *Amount payable.* The amount of loss to be paid on a default claim depends upon the date the Secretary received the application for a guarantee commitment on the loan. If the application was received—

(i) Prior to July 1, 1972, or from August 19, 1972 through February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) From July 1 through August 18, 1972, or after February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the principal and interest in accordance with paragraph (a)(2) of this section. The unpaid principal amount of the loan may include capitalized interest to the extent authorized by § 682.202(b).

(2) *Payment of interest.* If the guarantee covers unpaid interest, the payment of a valid claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in § 682.511(e) for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(iii) During the period, after the claim is filed, that is required by the Secretary to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(3) *Recovery of outstanding debts.* The Secretary may reduce the amount of loss due to the lender on a claim by the amount the Secretary determines is owed to the Secretary by the lender.

(b) *Death, total and permanent disability, or bankruptcy claims.* (1) In the case of a death or disability claim, the amount to be paid on a valid claim—

(i) Is equal to the unpaid balance of the original principal loan amount disbursed if the loan was disbursed prior to December 15, 1968; or

(ii) Is calculated in accordance with § 682.402(f)(2) and (f)(3) if the loan was disbursed after December 14, 1968.

(2) In the case of a bankruptcy claim, the amount of loss is calculated in accordance with § 682.402(f)(2) and (f)(3).

(3) For purposes of this section, references to the "guaranty agency" in § 682.402(f)(3) mean the Secretary.

(c) *Special rules for a loan acquired by assignment.* If a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. For example, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1080, 1082, 1087)

§ 682.513 Factors affecting coverage of a loan under the loan guarantee.

(a)(1) In determining whether to approve for payment a claim against the Secretary's guarantee, the Secretary considers matters affecting the enforceability of the loan obligation and whether the loan was made and administered in accordance with the Act and applicable regulations.

(2) The Secretary deducts from a claim any amount that is not a legally enforceable obligation of the borrower, except to the extent that the defense of infancy applies.

(3) Except as provided in § 682.509, the Secretary does not pay a claim unless—

(i) All holders of the loan have complied with the requirements of this part, including, but not limited to, those concerning due diligence in the making, servicing, and collecting of a loan;

(ii) The current holder has complied with the deadlines for filing a claim established in § 682.511(e); and

(iii) The current holder complies with the requirements for submitting

documents with a claim as established in § 682.511(b).

(b) Except as provided in § 682.509, the Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary or if it would not be payable as a default claim by the Secretary.

(c) The Secretary's determination of the amount of loss payable on a default claim under this part, once final, is conclusive and binding on the lender that filed the claim.

Note: A determination of the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321–322.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

§ 682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for Federal GSL loans.

(a) The Secretary may waive the right to recover or refuse to make an interest benefits, special allowance, or claim payment, or may permit a lender to cure certain defects in a specified manner if, in the Secretary's judgment, the best interests of the United States so require.

(b) To receive payment on a default claim or to resume eligibility to receive interest benefits and special allowance on a loan as to which a lender has committed a violation of the requirements of this part regarding due diligence in collection or timely filing of claims, the lender shall meet the conditions described in appendix C to this part.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1080, 1082)

§ 682.515 Records, reports, and inspection requirements for Federal GSL program lenders.

(a) *Records.* (1) A lender shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in § 682.414(a)(3)(ii). The records must be maintained in a system that allows ready identification of each loan's current status.

(2) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(3)(i) The lender may store the records specified in § 682.414(a)(3)(ii)(C)–(K) on microfilm, optical disk, or other machine readable format.

(ii) The holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the holder shall return the original note and repayment instrument to the borrower and retain copies for the prescribed period.

(iii) The lender shall retain the original or a copy of the loan application.

(b) *Reports.* A lender shall submit reports to the Secretary at the time and in the manner that the Secretary reasonably may require.

(c) *Inspections.* Upon request, a lender or its agent shall cooperate with the Secretary, the Department's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to lender personnel associated with the lender's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel that do not include the presence of representatives of the lender's management; and

(iii) Refuse to permit personnel interviews with those personnel that are not recorded by the lender.

(Authority: 20 U.S.C. 1077, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

Subpart F—Requirements, Standards, and Payments for Participating Schools

§ 682.600 Agreement between an eligible school and the Secretary for participation in the FFEL programs.

(a) *General.* Participation of a school in the FFEL programs means that the school's students are eligible to receive FFEL loans. To participate in the FFEL programs, a school must—

(1) Demonstrate to the satisfaction of the Secretary that it meets the elements of basic eligibility as defined in 34 CFR part 600 through certification by the Secretary; and

(2) Enter into a written program participation agreement with the Secretary that is signed by the Chief Executive Officer of the school on a form approved by the Secretary.

(b) *Program participation agreement.* The school, in the program participation agreement, shall promise to comply with the applicable provisions of—

(1) The Act and the regulations in this part;

(2) The Student Assistance General Provisions, 34 CFR part 668; and

(3) The Institutional Eligibility regulations, 34 CFR part 600.

(c) *Appeal of denial or limitations.* (1) If the Secretary denies a request for an agreement or approves only limited participation in the FFEL programs by a school, the Secretary's response includes the reason for the decision. The Secretary also provides the school with an opportunity to meet with a designated Department official to appeal that decision.

(2) However, the Secretary does not grant an opportunity for appeal or give reasons for denying the participation or approving only the limited participation of a school if the school submits its request within six months of a previous denial or limited approval.

(d) *Foreign schools.* A foreign school is required to comply with the provisions of the regulations except to the extent that the Secretary states in these regulations or in other official publications or documents that those schools do not have to so comply.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1094)

§ 682.601 Rules for a school that makes or originates loans.

(a) *General.* To make or originate loans under the FFEL programs—

(1) The school shall employ full-time at least one person whose responsibilities are limited to the administration of financial aid programs for students attending the school;

(2) The school may not be a correspondence school;

(3) The school may not make or originate loans that would be outstanding to or on behalf of more than 50 percent of the undergraduates in attendance at that school on at least a half-time basis unless the Secretary waives this rule pursuant to paragraph (c) of this section;

(4) The school shall inform any undergraduate student who has not previously obtained a loan that was made or originated by the school and who seeks to obtain such a loan that he or she must first make a good faith effort to obtain a loan from a commercial lender; and

(5)(i) The school may not make or originate a loan for an academic period to a student described in paragraph

(a)(4) of this section until the student provides the school with evidence under paragraph (b) of this section of denial of a loan by a commercial lender for the same academic period.

(ii) In determining whether a school has complied with the requirement set paragraph (a)(5)(i) of this section, the Secretary may take into consideration any patterns reflected by the letters of denial or the students' sworn statements referred to in paragraph (b) of this section that indicate that the school has not given sufficient counseling to students to seek loans from a commercial lender first. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

(b) *Establishing a loan denial by a commercial lender.* (1) To verify that a borrower has sought and been denied a loan from a commercial lender pursuant to paragraph (a)(4) of this section, the school shall obtain from the borrower—

(i) A written statement from a commercial lender indicating that the lender denied the borrower a loan for that academic period; or

(ii) The borrower's sworn statement, indicating both the refusal of a loan by a commercial lender and the lender's refusal to provide a written statement of the denial.

(2) If the borrower's statement is used to establish the denial of a loan, the statement must include—

(i) The name and address of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name and telephone number of the official who communicated the denial to the borrower; and

(iv) The borrower's signature.

(3) If the school determines that the denial of a loan to an eligible borrower by a commercial lender is based upon the lender's refusal to lend more than a part of the amount requested by the borrower, the school may either—

(i) Make or originate a loan to the borrower for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the borrower.

(c) *Waiver of the 50 percent lending limit.* A school may request the Secretary to waive the 50 percent lending limit described in paragraph (a)(3) of this section if adherence to that limit would create a substantial hardship for the school's present or prospective students. The Secretary determines whether to grant the school a waiver after considering, among other factors—

(1) The extent to which the school provides and expects to continue providing educational opportunities to economically disadvantaged students, as measured by the percentage of those students enrolled at the school who—

(i) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll or continue their enrollment at that school without Stafford, SLS, or PLUS loans made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school;

(2) The extent to which the school offers educational programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit; and

(3) The quality of the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1085)

§ 682.602 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students and provide it to a prospective student prior to the student's enrollment.

(b) The school shall include in its schedule—

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must begin, the location of any residential training, and the period of time within which that resident training must be completed.

(c) The school's schedule must conform to the requirements in the definition of "vocational school" in 34 CFR part 600.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1085)

§ 682.603 Certification by a participating school in connection with a loan application.

(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made on the application by the student.

(b) The information to be provided by the school about the borrower making application for the loan pertains to—

(1) The borrower's eligibility for a loan, as determined in accordance with § 682.201 and § 682.401(b) (1) and (2);

(2) The student's estimated cost of attendance for the period for which the loan is sought;

(3) The student's estimated financial assistance for the period for which the loan is sought;

(4) For a Stafford loan, the student's eligibility for interest benefits, based on information provided by the student upon which the school can rely and as determined in accordance with § 682.301;

(5) For a Stafford or SLS loan, the schedule for disbursement of the loan proceeds; and

(6) The student's SLS loan amount.

(c) Pursuant to 34 CFR 668.15(i), except for a student who has previously borrowed an SLS loan for a program of study at the school and who seeks an SLS loan to complete the program of study at the school, a school may not certify an SLS loan application for an undergraduate student after the school receives notice from the Secretary that its fiscal year default rate is 30 percent or more.

(d) A school may not certify a Stafford, PLUS, or SLS loan application, or combination of loan applications, for a loan amount that—

(1) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in § 682.204; or

(2) Exceeds the student's estimated cost of attendance, less—

(i) The student's estimated financial assistance for that period; and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period.

(e) A school may refuse to certify a Stafford, SLS, or PLUS loan application or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the student in writing, provided—

(1) The determination is made on a case-by-case basis;

(2) The documentation supporting the determination is retained in the student's file; and

(3) The school does not engage in any pattern or practice that results in a denial of a borrower's access to FFEL

loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, or selection of a particular lender or guaranty agency.

(f)(1) The minimum period of enrollment for which a school may certify a loan application is—

(i) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a single academic term (e.g., a semester or quarter); or

(ii) At a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of—

(A) The length of the student's program at the school; or

(B) The academic year as defined by the school in accordance with 34 CFR 668.2, (See paragraphs (b) and (c) of the definition of "Academic year.")

(2) The maximum period for which a school may certify a loan application is generally an academic year, as defined by 34 CFR 668.2, except that a guaranty agency may allow schools to use a longer period of time, not to exceed 12 months, corresponding to the period to which the agency applies the annual loan limits under § 682.401(b)(2)(ii).

(g) A school may not assess the borrower a fee for the completion or certification of any FFEL loan application.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1085, 1094)

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

(a) *Purpose.* This section establishes rules governing a school's processing of a borrower's Stafford, PLUS, or SLS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(b) *General.* (1) Except as provided in § 682.207(b)(1)(v)(C)(*1*), the proceeds of a Stafford, SLS or PLUS loan disbursed using electronic transfer of funds must be sent directly to the school by the lender.

(2)(i) Except in the case of a late disbursement under paragraph (e) of this section or as provided in paragraph (b)(2)(iii) or (iv) of this section, a school may release the proceeds of any disbursement of a loan only to a student whom the school determines, after the school receives those proceeds from the lender, continuously has maintained eligibility in accordance with the provisions of § 682.201, from the beginning of the loan period certified by the school on the student's loan application.

(ii) In the event a student delays attending school for a period of time, the school may consider that student to have maintained eligibility for the loan from the first day of the period of enrollment. However, the school must comply with the requirement of paragraph (d)(3) of this section.

(iii) If, after the proceeds of the first disbursement are transmitted to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs, the school may transmit the proceeds of the second or subsequent disbursement to the borrower as permitted by 34 CFR part 668.

(iv) If, prior to the transmittal of the proceeds of a disbursement to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may transmit the proceeds of that disbursement and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(c) *Processing of the loan proceeds by the school.* (1) Except as provided in paragraph (c)(3) of this section, if a school receives a borrower's loan proceeds, it shall hold the funds until the student has registered for classes for the period of enrollment for which the loan is intended and then follow the procedures in paragraph (c) (2) of this section.

(2)(i) Except as provided in § 682.207(b)(1)(v)(C)(*1*), after the student has registered, if the loan proceeds are disbursed by means of a check that requires the endorsement of the student only, the school shall deliver the check to the student, subject to paragraph (d)(2) of this section, within 45 days of the school's receipt of the check.

(ii) If the loan proceeds are disbursed by means of a check that requires the endorsement of both the student and the school, the school shall—

(A) In the case of the initial disbursement on a loan, endorse the check on its own behalf, and, after the student has registered, deliver it to the student subject to paragraph (d)(2) of this section, within 45 days of the school's receipt of the check; or

(B) Obtain the student borrower's endorsement on the check, endorse the check on its own behalf and, after the student has registered, credit the student's account, in accordance with paragraph (d)(1) of this section, and deliver the remaining loan proceeds to the student, subject to paragraph (d)(2) of this section, within 45 days of receipt.

(3) If the loan proceeds are disbursed by electronic funds transfer to an account of the school on behalf of a borrower in accordance with § 682.207(b)(1)(ii)(B), the school shall, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended, obtain the student's or parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL program loan to be made, and after the student has registered either—

(i) Deliver the proceeds to the student borrower subject to paragraph (d)(2) of this section not later than 45 days after the school's receipt of the funds; or

(ii) Credit the student's account in accordance with paragraph (d)(1) of this section, notify the student or parent borrower in writing that it has so credited that account, and deliver to the student or parent borrower the remaining loan proceeds, subject to paragraph (d)(2) of this section not later than 45 days after the school's receipt of the funds.

(4) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in § 682.605(c).

(5) A school may not release the first installment of a Stafford or SLS loan for endorsement to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford or SLS loan until 30 days after the first day of the student's program of study.

(d) *Applying the loan proceeds.* (1)(i) For purposes of paragraphs (c)(2)(ii)(B) and (c)(3)(ii) of this section, a school may not credit a registered student's account earlier than three weeks before the first day of classes of the period of enrollment for which the loan is intended.

(ii)(A) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed.

(B) The school, as a fiduciary for the benefit of the guaranty agency, the

Secretary, and the student, may hold any additional loan proceeds that the student requests in writing that the school retain in order to assist the student in managing his or her loan funds for the remainder of the academic year. The school shall deposit these funds in a designated trust account and may not commingle them with other funds or use them for any other purpose.

(2)(i) For purposes of paragraphs (c)(2)(i), (c)(2)(ii), and (c)(3) of this section, an institution may not deliver loan proceeds to a registered student earlier than 10 days before the first day of classes of the period of enrollment for which the loan is intended.

(ii) Notwithstanding the 45-day deadlines set forth in paragraph (c)(2) of this section, in the case of a second or subsequent disbursement on a loan disbursed in more than one installment, the school may hold the loan proceeds until the beginning of the next scheduled semester, trimester, quarter, or similar division in the academic period within the period of enrollment for which the loan is intended, or in the case of a school that does not use semesters, trimesters, quarters, or similar divisions, until the beginning of the second half of the period of enrollment for which the loan was intended, whereupon the school shall transmit the loan proceeds to the student and, if applicable, the student's account within 30 days thereafter.

(3) If a student does not register for the period of enrollment for which the loan was made, or does not begin attendance on a delayed basis as provided in § 682.604(b)(2)(ii), the school shall return the proceeds to the lender no later than 30 days after the first day of that period of enrollment.

(4) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made or fails to attend school during that period, or if the school is unable for any other reason to document that the student attended school during that period, the school within 30 days of the period described in § 682.607(c) shall notify the lender of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the lender—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) The amount of payments made directly by the student to the school, to the extent that they do not exceed the amount of any loan proceeds delivered by the school to the student.

(e) *Processing a late disbursement.* (1) For the purpose of this paragraph, a disbursement is late if the school receives the borrower's loan proceeds either—

(i) After the end of the period of enrollment for which the loan was made; or

(ii) Before the end of the period of enrollment for which the loan was made but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) A school shall follow the procedures described in paragraphs (e)(3)–(4) of this section in processing a late disbursement, except that, notwithstanding those provisions, a school may not—

(i) Deliver the proceeds of a late disbursement to a student borrower whose last recorded day of attendance is earlier than the 30th day of the period of enrollment for which the loan is intended if the loan was subject to delayed delivery under § 682.604(c)(5)(i); or

(ii) Deliver the proceeds of a late second or subsequent disbursement of a Stafford or SLS loan to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully completed the period of enrollment for which the loan was intended.

(iii) Deliver to a borrower any portion of the proceeds of a late disbursement that under 34 CFR Part 668 is considered to be awarded for a payment period in which the student was not enrolled on at least a half-time basis at the school.

(3) If a lender makes a disbursement after the earlier of the dates set forth in paragraph (e)(1) of this section and the lender or guaranty agency has informed the school that it prohibits a late disbursement as permitted by § 682.207(d)(2), the school shall return the loan proceeds to the lender within 30 days after its determination that one of the conditions described in paragraph (e)(1) of this section exists. The school shall send a notice to the lender with the loan proceeds informing the lender as to which of the conditions described in paragraph (e)(1) of this section exists.

(4) If a disbursement is received by the school within 60 days after the earlier of the dates described in paragraph (e)(1) of this section, if the lender or guaranty agency has not informed the school that it prohibits a late disbursement as permitted by § 682.207(d)(2)(i), and if the total amount of the disbursement and all prior disbursements on the loan do not exceed that portion of the student's documented educational charges for the period of enrollment completed by the student before the earlier of the dates described in paragraph (e)(1) of this section, the school shall deliver the borrower's loan proceeds to the borrower in accordance with this section. If the total amount of the late disbursement and all prior disbursements is greater than that portion of the borrower's documented educational charges, the school shall—

(i) Return the borrower's loan proceeds to the lender with a notice certifying—

(A) The beginning and ending dates of the period during which the borrower was enrolled at the school as an eligible student during the loan period; and

(B) The borrower's correct financial need for the loan for that period of enrollment; and

(ii) Advise the borrower that the lender may redisburse funds for the borrower's documented educational charges incurred before the earlier of the dates described in paragraph (e)(1) of this section.

(f) *Initial counseling.* (1) Except in the case of a correspondence school or for a student enrolled in a study-abroad program approved for credit at the home institution, a school shall conduct counseling with each Stafford and SLS borrower either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to its release of the first disbursement of the proceeds of the first Stafford or SLS loan made to the borrower for attendance at the school and shall ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. In the case of a correspondence school or a student enrolled in a study-abroad program that the school approves for credit, the school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iii) In the case of a borrower of a Stafford or SLS loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not

receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(g) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each Stafford and SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling, the school shall—

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained Stafford or SLS Program loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (e.g., loan consolidation, refinancing);

(iv) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(v) Include the matters described in paragraph (f)(2) of this section; and

(vi) Review with the borrower the conditions under which the borrower may defer repayment of a loan for service under the Peace Corps Act, Domestic Volunteer Service Act of 1973, or for comparable full-time service as a volunteer with a tax-exempt organization.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f)–(g) of this section as to that borrower.

(h) *Treatment of excess loan proceeds.* Except in the case of a student attending a foreign school, if, before the delivery of any Stafford or SLS loan disbursement, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was made that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

(1) Using the student's SLS, PLUS, nonsubsidized Stafford, or State-sponsored or private loan to cover the expected family contribution, if not already done;

(2)(i) Returning the entire undelivered disbursement to the lender or escrow agent; and

(ii) Providing the lender with a written statement—

(A) Describing the reason for the return of the funds, if any;

(B) Setting forth the student's revised financial need; and

(C) Directing the lender to re-disburse a revised amount and, if necessary, revise subsequent disbursements to eliminate the overaward; or

(3) Returning to the lender only the portion of the disbursement for which the student is ineligible and providing the lender with a written statement explaining the return of the funds.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1082, 1085, 1092, 1094)

§ 682.605 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part for the purpose of reporting to the lender the date that the student has withdrawn from the school and for determining when a refund must be paid under § 682.607.

(b) *The withdrawal date.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal as determined by the school. The school must determine the student's date of withdrawal no later than—

(A) 45 days after the expiration date of the academic term in which the student was enrolled for a school that uses academic terms (e.g., semester, trimester, or quarter), except that 30 days after the first day of the next scheduled term may be used in the case of a summer break; or

(B) 25 days after a student's last date of attendance for a school that measures academic progress either in clock hours or credit hours but does not use a semester, trimester, or quarter system.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is the date of the last lesson submitted if the student fails to submit the next scheduled lesson in accordance with the schedule of lessons established under § 682.602. However, if the student establishes in writing, within 60 days of the date of the last lesson submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school may not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month, day, and year of the withdrawal date determined under paragraphs (b)(1)–(b)(3) of this section.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by a school in accordance with this paragraph is not considered to have withdrawn from school for purposes of paragraph (a) of this section. In any 12-month period, a school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) 60 days; or

(ii) 6 months under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.606 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, room and board, and other charges to a student who received a Stafford or SLS Program loan, or whose parent received a PLUS Program loan on behalf of the student, if the student—

(i) Does not register for a period of enrollment for which the loan was intended; or

(ii) Withdraws or otherwise fails to complete a period of enrollment for which the loan was made.

(2) The school shall provide a written statement containing its refund policy, together with examples of the application of this policy, to a prospective student before the student's enrollment and shall make its policy known to currently enrolled students. The school shall include in its statement the procedures that a student must follow to obtain a refund, but the school shall pay to the lender the portion of a refund allocable to the student's Stafford, SLS, or PLUS program loans under 34 CFR part 668 whether or not the student follows those procedures. If the school changes its refund policy, it shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if—

(1) That policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law; or

(ii)(A) The specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or

(B) If no such standards exist, the specific refund policy standards contained in appendix A to this part or the refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary; and

(2) Within 60 days after the school's receipt of notice from the Secretary that its cohort default rate, as defined in 34 CFR part 668, exceeded 30 percent for any fiscal year after 1986, and continuing until the Secretary notifies the school that its rate was equal to or less than 30 percent for a subsequent fiscal year, the school's policy conforms with the *pro rata* refund calculation described in paragraph (c) of this section or the requirements of paragraph (b)(1) of this section, whichever results in the larger refund amount. However, the provisions of paragraph (b)(2) of this section do not apply to the school's refund policy for any student whose last recorded day of attendance is after the earlier of—

(i) The halfway point (in time) for the student's program of study; or

(ii) Six months after the beginning of the student's program.

(c)(1) *Pro rata refund,* as used in this section, means a refund by the school of not less than that portion of the tuition, fees, room and board, and other charges assessed the student by the school equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded downward to the nearest 10 percent but never less than 10 percent, of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, and less—

(i) A reasonable administrative fee not to exceed the lesser of $100 or 5 percent of tuition, fees, room and board, and other charges assessed the student; and

(ii) Charges authorized by paragraph (c)(5) of this section.

(2) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in credit hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of weeks that make up the period of enrollment for which the student has been charged into the number of weeks remaining in that period as of the last recorded day of attendance by the student.

(3) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in clock hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student.

(4) For purposes of paragraph (c)(1) of this section, in the case of a correspondence program, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of those lessons not submitted by the student.

(5) A school may require that equipment issued to the student by the school that the school could reissue to another student be returned by a student once the school determines that the student has withdrawn if the school makes a written request for the return that is received by the student within 10 days of the date of that determination. If the school notified the student in writing before enrollment that return of the specific equipment involved would be required if the student withdrew, the school may deduct from the refund owed under this section the documented cost to the school of that equipment if the student fails to return it within 10 days of the date of the student's receipt of the request from the school. However, the school may not delay its payment of a refund to a lender under § 682.607 by reason of this process.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.607 Payment of a refund to a lender.

(a) *General.* By applying for a FFEL loan, a borrower authorizes the school to pay directly to the lender that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to a FFEL loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund to a lender on behalf of that student.

(b) *Allocation of refund.* In determining the portion of a student's refund for an academic period that is allocable to a FFEL loan received by the borrower for that academic period, the school shall follow the procedures established in 34 CFR part 668 for allocating a refund that is payable.

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the student's withdrawal as determined under § 682.605(b)(1)–(3); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 682.605(c), within 30 days after the last day of that leave of absence.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.608 Termination of a school's lending eligibility.

(a) *General.* The Secretary may terminate a school's eligibility to make loans under this part if the school reaches the 15 percent limit on loan

defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Secretary may terminate a school's eligibility to make loans if at the end of each of the 2 most recent consecutive Federal fiscal years for which data are available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section as follows:

(i) The original principal amount of all loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination under this section, the Secretary considers the status of all FFEL loans made by the school whether the loans are held by the school or by a subsequent holder.

(c) *Exception based on hardship.* The Secretary does not terminate a school's lending eligibility under paragraphs (a) and (b) of this section if the Secretary determines that the termination would result in a hardship for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will reduce the school's loan default rate significantly within the next year. Examples of these improvements include—

(i) Adopting more efficient collection procedures; or

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on—

(i) The extent to which the school provides, and expects to continue to provide educational opportunities to economically disadvantaged students as measured by the percentage of students enrolled at the school who—

(A) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll or continue their enrollment at that school without a loan from the school; and

(C) Would not be able to obtain a comparable education at another school;

(ii) The extent to which the school offers educational programs that—

(A) Are unique in the geographical area that the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school; and

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* (1) The Secretary notifies the school of the proposed termination of its lending eligibility and provides an opportunity for a hearing before the Secretary terminates the school under this section.

(2) The Secretary or his designee begins a termination action by sending a notice to the school. The notice is sent by certified mail with return receipt requested. The notice—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed date the termination becomes effective; and

(iii) Informs the school that it has 15 days to—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraphs (a) and (b) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request an oral hearing to show why the school's lending eligibility should not be terminated.

(3) If the school does not request an oral hearing but submits written material, the Secretary or the designated official considers that material and notifies the school as to whether the termination action will be taken.

(4) The Secretary or the designated official (presiding officer) schedules the date and place of a hearing for a school that has requested an oral hearing. The date of the hearing is at least 15 days from the date of receipt of the request. A presiding officer—

(i) Conducts the hearing;

(ii) Considers all written material presented before the hearing and any other material presented during the hearing; and

(iii) Determines if termination of the school's lending eligibility is warranted.

(5) The decision of the designated official is subject to review by the Secretary.

(e) *Effects of termination.* A school that has its lending eligibility terminated under this section may not—

(1) Make further loans under this part until it has entered into a new guarantee agreement with the Secretary; or

(2) Enter into a new guarantee agreement with the Secretary until at least one year after the school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes loans to students or parents of students in attendance at other schools under the same ownership, the Secretary may make the determination required by this section by—

(1) Treating all of the schools as one school; or

(2) Treating each school on an individual basis.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1085)

§ 682.609 Remedial actions.

(a) The Secretary may require a school to repay funds paid to other program participants by the Secretary. The Secretary also may require a school to purchase from the holder of a FFEL loan that portion of the loan that is unenforceable, that the borrower was ineligible to receive, or for which the borrower was ineligible to receive interest benefits contrary to the school's certification, and to make arrangements acceptable to the Secretary for reimbursement of the amounts the Secretary will be obligated to pay to program participants respecting that loan in the future. The repayment of funds and purchase of loans may be required if the Secretary determines that the payment to program participants, the unenforceability of the loan, or the disbursement of loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest benefits, resulted in whole or in part from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to another party or to purchase loans from a holder in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or repurchase of loans by a school if, in the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the FFEL programs, in accordance with 34 CFR part 668, subpart G.

(e) A school shall comply with any emergency action, limitation, suspension, or termination imposed by

a guaranty agency in accordance with the agency's standards and procedures. A school shall repay funds to the Secretary or other party or purchase loans from a holder if a guaranty agency determines that the school improperly received or retained the funds in violation of a Federal law or regulation or a guaranty agency rule or regulation.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.610 Administrative and fiscal requirements for participating schools.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668 in order to—

(i) Protect the rights of student and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, and PLUS loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application or data electronically submitted to the lender which can, upon request, produce a hard copy record of—

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of enrollment for which the loan was intended;

(4) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(5) The sources and amounts of financial assistance available to the student that the school used in determining the student's estimated financial assistance for the loan period in accordance with § 682.200;

(6) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(7) The amount and basis of its calculation of any refund paid to or on behalf of a student;

(8) In the case of a Stafford loan for which the borrower applies for interest benefits under § 682.301, the data used to determine the student's expected family contribution and the corresponding certification by the school to the lender;

(9) In the case of a Stafford or SLS loan—

(i) The date the school received each loan disbursement and the amount of that disbursement;

(ii) The date the school endorsed each loan check;

(iii) The date or dates of transmittal of the loan proceeds by the school to the student; and

(iv) For loans delivered by electronic funds transfer, a copy of the student's written authorization required under § 682.604(c)(3) to transfer the initial and subsequent disbursements of each FFEL program loan;

(10) The student's job placement, if known; and

(11) Any other matter for which a record would be required for the school to be able to document its compliance with applicable requirements with respect to the loan.

(c) *Student status confirmation reports.* A school shall—

(1) Upon receipt of a student status confirmation report form from the Secretary or a similar student status confirmation report form from any guaranty agency, complete and return that report within 30 days of receipt to the Secretary or the guaranty agency, as appropriate; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary or the guaranty agency within the next 60 days, notify the guaranty agency or lender within 30 days—

(i) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis.

(d) *Record retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1)(i) Shall keep all records required under the regulations in this part for five years following the last day of the borrower's attendance at the school;

(2) Shall keep for five years after completion copies of reports and other forms used by the school relating to the Stafford, SLS, or PLUS programs;

(3) Shall keep all records involved in any loan, claim, or expenditure questioned by a Federal audit until resolution of any audit questions.

(4) Shall provide in the event of the school's closure, termination, suspension, or change in ownership resulting in a change of control as described in 34 CFR part 600 for the retention of the records and reports required by the regulations in this part and for access by the Secretary or the Secretary's authorized representatives to those records and reports for inspection and copying; and

(5) May keep records and copies of reports on microfilm, optical disk, or in other machine readable format.

(e) *Inspection requirements.* Upon request, a school or its agent shall cooperate with an independent auditor, the Secretary, any guaranty agency, the Department's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel without the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel unless they are recorded by the institution.

(f) *Information sharing.* (1) Upon request of the Secretary, a lender, or a guaranty agency, a school promptly shall provide a lender or guaranty agency with any information the school has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(2) If the school discovers that a student who is enrolled and who has received a Stafford or SLS loan has changed his or her permanent address, the school shall notify the holder of the loan within 30 days thereafter, either directly or through the guaranty agency

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2 1082, 1094)

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

§ 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination by the Secretary of the eligibility of an otherwise eligible lender to participate in the FFEL programs. The regulations in this subpart apply to a lender that violates any statutory provision governing the FFEL programs or any regulations, special arrangements, agreements, or limitations prescribed under those programs. These regulations apply to lenders that participate only in a guaranty agency program as well as to lenders that participate in the Federal FFEL programs. These regulations also govern the Secretary's disqualification of a lender or school from participation in the FFEL programs under sections 432 (h)(2) and (h)(3) of the Act.

(b) This subpart does not apply—

(1) To a determination that an organization fails to meet the definition of "eligible lender" in section 435(d)(1) of the Act or the definition of "lender" in § 682.200, for any reason other than a violation of the prohibitions set forth in section 435(d)(5) of the Act;

(2) To a school's loss of lending eligibility under § 682.608; or

(3) To an administrative action by the Department of Education based on any alleged violation of—

(i) The Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act), which is governed by 34 CFR part 99;

(ii) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR parts 100 and 101;

(iii) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap), which is governed by 34 CFR part 104; or

(iv) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR part 106.

(c) This subpart does not supplant any rights or remedies that the Secretary may have against participating lenders or schools under other authorities.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.701 Definitions of terms used in this subpart.

The following definitions apply to terms used in this subpart:

Designated Departmental Official: An official of the Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing disqualification or limitation, suspension, or termination proceedings.

Disqualification: The removal of a lender's or school's eligibility for an indefinite period of time by the Secretary on review of limitation, suspension, or termination action taken against the lender or school by a guaranty agency.

Limitation: The continuation of a lender's eligibility subject to compliance with special conditions established by agreement with the Secretary or a guaranty agency or imposed as the result of a limitation or termination proceeding.

Suspension: The removal of a lender's eligibility for a specified period of time or until the lender fulfills certain requirements.

Termination: The removal of a lender's eligibility for an indefinite period of time—

(a) By a guaranty agency; or

(b) By the Secretary, based on an action taken by the Secretary, or a designated Departmental official under § 682.706.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings by the Secretary do not affect a lender's responsibilities or rights to benefits and claim payments that are based on the lender's prior participation in the program, except as provided in paragraph (c) of this section and in § 682.709.

(b) A limitation imposes on a lender—

(1) A limit on the number or total amount of loans that a lender may make, purchase, or hold under the FFEL programs;

(2) A limit on the number or total amount of loans a lender may make to, or on behalf of, students at a particular school under the FFEL programs; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

(c) After the date the termination of a lender's eligibility becomes effective, the Secretary does not guarantee new loans made by that lender or pay interest benefits, special allowance, or reinsurance on new loans guaranteed by a guaranty agency after that date. The Secretary may also prohibit the lender from making further disbursements on a loan for which a guarantee commitment has already been issued.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) Under the informal compliance procedure, the Secretary gives the lender a reasonable opportunity to—

(1) Respond to the complaint or information; and

(2) Show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence.

(c) The Secretary does not delay limitation, suspension, or termination procedures during the informal compliance procedure if—

(1) The delay would harm the FFEL programs; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.704 Emergency action.

(a) The Secretary, or a designated Departmental official, may take emergency action to stop the issuance of guarantee commitments by the Secretary and guarantee agencies and to withhold payment of interest benefits and special allowance to a lender if the Secretary—

(1) Receives reliable information that the lender is in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, parent borrowers, or students; and

(3) Determines that the likelihood of loss exceeds the importance of following the procedures for limitation, suspension, or termination.

(b) The Secretary begins an emergency action by notifying the lender, by certified mail, return receipt requested, of the action and the basis for the action.

(c) The date the action becomes effective is the date the notice is mailed to the lender.

(d)(1) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that time expires.

(2) If a limitation, suspension, or termination proceeding is begun before the expiration of the 30-day period—

(i) The emergency action may be extended until completion of the proceeding, including any appeal to the Secretary; and

(ii) Upon the written request of the lender, the Secretary may provide the lender with an opportunity to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.705 Suspension proceedings.

(a) *Scope.* (1) A suspension by the Secretary removes a lender's eligibility under the FFEL programs, and the Secretary does not guarantee or reinsure a new loan made by the lender during a period not to exceed 60 days from the date the suspension becomes effective, unless—

(i) The lender and the Secretary agree to an extension of the suspension period, if the lender has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) *Notice.* (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed date the suspension becomes effective, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender that the suspension will not take effect on the proposed date if the Secretary receives at least five days prior to that date a request for an oral hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender to correct voluntarily any alleged violations.

(c) *Hearing.* (1) If the lender does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Determines that the proposed suspension should be implemented and notifies the lender of the effective date of the suspension.

(2) If the lender requests an oral hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed suspension takes effect until a hearing is held.

(3) The oral hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision based on findings of fact and conclusions of law that may suspend the lender's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender.

(7) The Secretary automatically reviews the initial decision of the presiding officer. The Secretary notifies the lender of the Secretary's decision by mail.

(8) A suspension takes effect on either a date that is at least 20 days after the date the notice of a decision imposing the suspension is mailed to the lender, or on the proposed effective date stated in the notice sent under paragraph (b) of this section, whichever is later.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed date the limitation or termination becomes effective, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender that the limitation or termination will not take effect on the proposed date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the limitation or termination should not take effect;

(vii) Asks the lender to correct voluntarily any alleged violations; and

(viii) Notifies the lender that the Secretary may collect any amount owed by means of offset against amounts owed to the lender by the Department and other Federal agencies.

(b) *Hearing.* (1) If the lender does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender of the date the limitation or termination becomes effective.

(2) If the lender requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence presented at or before the hearing and matters given official notice.

(6) If a termination action is brought against a lender and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating the lender's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender.

(8) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender and the Secretary or designated Department official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties unless the lender or designated

Department official appeals the decision to the Secretary within this period.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer is convicted of or pled *nolo contendere* or guilty to a crime involving the unlawful acquisition, use, or expenditure of FFEL funds, that conviction or guilty plea is automatic grounds for terminating the lender's eligibility to participate in the FFEL programs.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender or designated Departmental official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(9)—

(1) An appeal is made to the Secretary by submitting to the Secretary and the opposing party within 15 days of the date of the appealing party's receipt of the presiding officer's decision, a brief or other written material explaining why the decision of the presiding officer should be overturned or modified; and

(2) The opposing party shall submit its brief or other written material to the Secretary and the appealing party within 15 days of its receipt of the brief or written material of the appealing party.

(b) The Secretary issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(c) Any party submitting material to the Secretary shall provide a copy to each party that participates in the hearing.

(d) If the presiding officer's initial decision would limit or terminate the lender's eligibility, it does not take effect pending the appeal unless the Secretary determines that a stay of the date it becomes effective would seriously and adversely affect the FFEL programs or student or parent borrowers.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart must be substantiated by the original receipts from the U.S. Postal Service.

(b) If a lender refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender refuses to accept the notice.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender improperly received, withheld, disbursed, or caused to be disbursed.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may, without further notice or opportunity for a hearing, proceed to offset or arrange for another Federal agency to offset the amount due against any interest benefits, special allowance, or other payments due to the lender.

(Authority: 20 U.S.C. 1080, 1082, 1094)

§ 682.710 Removal of limitation.

(a) A lender may request removal of a limitation imposed by the Secretary in accordance with the regulations in this subpart at any time more than 12 months after the date the limitation becomes effective.

(b) The request must be in writing and must show that the lender has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d)(1) If the Secretary denies the request or establishes other limitations, the lender, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender may continue to participate in the FFEL programs, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.711 Reinstatement after termination.

(a) A lender whose eligibility has been terminated by the Secretary in accordance with the regulations in this subpart may request reinstatement of its eligibility at any time more than 18 months after the date the termination becomes effective.

(b) The request must be in writing and must show that—

(1) The lender has corrected any violations on which the termination was based; and

(2) The lender meets all requirements for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR part 668 may not be considered for reinstatement as a lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) Within 60 days after receiving a request for reinstatement, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Secretary denies the lender's request or allows reinstatement subject to limitations, the lender, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender whose eligibility to participate in the FFEL programs is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guaranty agency against a lender participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary's review, the Secretary notifies the guaranty agency and the lender of the Secretary's decision by mail.

(b) The Secretary disqualifies a lender from participation in the FFEL programs if—

(1) The lender waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(U) of the Act.

(c)(1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The lender has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the lender will comply with the

requirements of the FFEL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guaranty agency shall refer a limitation, suspension, or termination action that it takes against a lender to the Secretary within 30 days of its final decision to limit, suspend, or terminate the lender's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a lender's eligibility only when the guaranty agency's action is final, e.g. the lender is not entitled to any further appeals within the guaranty agency. A subsequent court challenge to an agency's action does not by itself affect the timing of the Secretary's review.

(f) The guaranty agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guaranty agency's letter initiating the action.

(2) The lender's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or lender review report or documented basis that led to the action.

(8) All other documents relevant to the action.

(g) The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h)(1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(U) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(U) of the Act and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the lender that the Secretary will review the guaranty agency's action to determine whether to disqualify the lender from further participation in the FFEL programs and affords the lender an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary's review of the guaranty agency's action is limited to whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, or termination of eligibility of a lender under the FISL Program (34 CFR part 682, subpart G).

(j) In the case of an action by an agency that limits or suspends a lender's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The lender has not corrected the violation. A violation is corrected if, among other things, the lender has satisfied fully all liabilities incurred by the lender as a result of the violation, including its liability to the Secretary, or the lender has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The lender has not provided satisfactory assurances to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the lender from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the lender's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082)

§ 682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guaranty agency against a school participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary's review, the Secretary notifies the guaranty agency and the school of his decision by mail.

(b) The Secretary disqualifies a school from participation in the FFEL programs if—

(1) The school waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(T) of the Act.

(c)(1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The school has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the school will comply with the requirements of the FFEL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guaranty agency shall refer a limitation, suspension, or termination action that it takes against a school to the Secretary within 30 days of its final decision to limit, suspend, or terminate the school's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a school's eligibility only when the guaranty agency's action is final, i.e., the institution is not entitled to any further appeals within the guaranty agency. A subsequent court challenge to an agency's action does not by itself affect the timing of the Secretary's review.

(f) The guaranty agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guaranty agency's letter initiating the action.

(2) The school's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or program review report or documented basis that led to the action.

(8) All other documents relevant to the action.

(g) The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h)(1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(T) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(T) of the Act, and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the school that the Secretary will review the guaranty agency's action to determine whether to disqualify the school from further participation in the FFEL programs and gives the school an opportunity within 30 days from the date the notice is mailed—

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary's review of the guaranty agency's action is limited to—

(1) A review of the written record of the agency's proceedings; and

(2) Whether the agency action was taken in accordance with procedures that were substantially the same as procedures established by the Secretary in 34 CFR part 668, subpart G.

(j) In the case of an action by an agency that limits or suspends a school's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The school has not corrected the violation. A violation is corrected if, among other things, the school has fully satisfied all liabilities incurred by the school as a result of the violation, including its liability to the Secretary, or the school has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The school has not provided assurances satisfactory to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the school from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the school's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082, 1085, 1094)

Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

§ 682.800 Special allowance payments for loans financed by proceeds of tax-exempt obligations.

(a) The Secretary pays a special allowance on a loan that was made or acquired with the proceeds of an obligation exempt from taxation under section 103 of the Internal Revenue Code of 1986 and is held by or on behalf of an Authority if—

(1) For loans financed by an obligation issued after December 31, 1980 and before November 16, 1986, the Secretary approved—

(i) The Plan for Doing Business of the Authority that issued the obligation; and

(ii) The justification of need for the obligation if the obligation was issued after August 14, 1983; or

(2) The Plan for Doing Business of the Authority that issued the obligations has been approved by the Governor of the State from which the Authority received or will seek an allocation under section 103(n) of the Internal Revenue Code of 1986 after consultation with the principal guaranty agency for the State.

(b) The Secretary pays a special allowance—

(1) For loans described in paragraph (a)(1) of this section from the latest of—

(i) The date the Secretary approved the Plan for Doing Business of the Authority;

(ii) The date the Secretary approved the justification of need for the obligation, if issued after August 14, 1983; or

(iii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation.

(2) For a loan described in paragraph (a)(2) of this section, from the latest of—

(i) The date the Governor approved the Plan for Doing Business of the Authority;

(ii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation; or

(iii) November 16, 1986, if the loan was made or acquired with the proceeds of a tax-exempt obligation issued before that date by an Authority that did not receive before that date approval from the Secretary for its Plan for Doing Business, and, if applicable, its justification of need.

(c) The Authority shall submit a copy of the Plan for Doing Business to the Secretary under paragraph (a)(2) of this section within 60 days after receiving the Governor's approval.

(d) As used in this paragraph, the term *principal guaranty agency* means—

(1) The guaranty agency in the State with which the Secretary has signed a Basic Program Agreement under § 682.401; or

(2) If the Secretary has signed agreements with more than one agency in the State, the agency that has issued the majority of loan guarantees for students who are attending school in the State during the most recently ended Federal fiscal year.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

§ 682.801 Provisions required in Plan.

Each Plan submitted for the approval of the Governor must contain provisions necessary to ensure that—

(a) If an Authority acts as a secondary market for student loans, it shall exclude no eligible lender in the service area from participation in its program, and shall permit all eligible lenders to participate in its program on the same terms and conditions;

(b) No director, officer, or staff member of the Authority who receives compensation from the Authority may own stock in, or receive compensation of any kind from, any agency or organization that contracts to service and collect the loans in which the Authority has a legal or equitable interest;

(c) The Authority shall not pay transfer fees in excess of the costs of transferring a loan portfolio or a portion of it from the lender to the Authority;

(d) The Authority shall, within the limits of funds available and subject to applicable State and Federal law, make loans to, or purchase loans made to, all eligible borrowers who are residents of or who seek loans for a student to attend a school within the service area of the Authority; and

(e) The Authority has a plan under which the Authority shall pursue both the recruitment of new lenders to participate in a continuing program of benefits to students under the FFEL, SLS, and PLUS programs and the maintenance of existing lender commitments to the program; and

(Authority: 20 U.S.C. 1082, 1087–1)

§ 682.802 Submission of Plan for approval—required documentation.

An Authority shall submit with or include in each Plan submitted for the approval of the Governor the following:

(a) If the Authority is a secondary market, a description of the procedures used to inform eligible lenders of the program of the Authority, samples of announcements to lenders regarding the program, and a listing of the types of lenders and numbers of each type so informed.

(b) If the Authority contracts with an agent to service or collect loans in which the Authority has a legal or equitable interest, a sample of the form signed by all directors, officers, and staff of the Authority who receive compensation from the Authority certifying that these persons do not own stock in or receive compensation of any kind from that agent and a list of the persons who have signed the form.

(c) If the Authority is a secondary market, a schedule of the amount of loan transfer fees paid or to be paid by the Authority to parties from whom it purchases loans and, if the amount of the loan transfer fee is based on an estimate, an explanation of how that estimated amount was determined.

(d) A copy of any Federal or State law that the Authority believes limits its ability to make or purchase loans made to any eligible borrowers who are residents of, or who obtained loans for a student to attend a school located within, its service area.

(e) A copy of the plan under which the Authority pursues both the recruitment of new lenders to participate in a continuing program of benefits to students under each of the FFEL programs and the maintenance of existing lender commitments to the programs.

(f) A copy of the most recent independent audit of the Authority performed in accordance with the audit standards found in § 682.830.

(g) A copy of any survey instrument or written inquiry form to be used to solicit from schools, lenders, and secondary markets information by which the Authority measures unmet need for student loan credit.

(h) A certification that the Authority is in compliance with section 438(d)(2) of the Act (regarding patterns or practices resulting in denial of access to student loan credit for certain borrowers).

(Authority: 20 U.S.C. 1082, 1087–1)

§ 682.803 Amendments to Plan for Doing Business.

(a) After a Plan is approved, an Authority shall submit to the Governor or the Secretary amendments to the Plan or such documentation as may be needed to reflect accurately the policy and practice of the Authority within 30 days of the date that—

(1) An Authority amends any provision of a Plan that had previously been approved by that Governor or the Secretary; or

(2) Any documentation or representation previously submitted pursuant to § 682.802 is revised or rendered inaccurate in any material aspect.

(b) An Authority shall promptly amend its Plan to comply with changes in applicable statutes and regulations.

(Authority: 20 U.S.C. 1082, 1087–1)

§ 682.804 Failure to comply with Plan for Doing Business.

(a) If the Secretary finds that an Authority has failed to comply with any requirement of its Plan or of this subpart, the Secretary takes actions necessary to protect the interests of the United States. These actions may include the following:

(1) Withholding payment of special allowances.

(2) Suspending or revoking approval of the Plan.

(3) Determining that loans made or purchased with the proceeds of a tax-exempt obligation by the Authority or any entity acting for the Authority after the date of suspension or revocation are ineligible for payments of special allowances.

(4) Requiring reimbursement from the Authority of special allowances paid on loans made or purchased by the Authority or any entity acting for the Authority.

(b) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to suspend or revoke approval of a Plan does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds that emergency action necessary to prevent substantial harm to Federal interests.

(c) Once final, the Secretary's decision to require a repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087–1)

§ 682.805 Sanctions for material misrepresentation.

(a) If at any time the Secretary determines that the submission for approval of a tax-exempt obligation or a Plan for Doing Business contains or contained a material misrepresentation, the Secretary may to the extent provided in paragraph (b) of this section—

(1) Require reimbursement from the Authority of special allowance payments to the Authority or to any other party on loans made or purchased with the proceeds of the issue with respect to which the misrepresentation was made; and

(2) Determine to be ineligible for special allowance payments any loans to be made or purchased by the Authority or any entity acting for the Authority with the unexpended proceeds of the issue with respect to which the misrepresentation was made.

(b) If an Authority uses funds from sources other than a tax-exempt obligation to retire an issue with respect to which the Secretary has determined that a material misrepresentation was made, the Secretary takes the adverse actions described in paragraph (a) of this section only with regard to those special allowance payments which accrued earlier than ninety days before that issue was retired.

(c) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to take any of the actions in § 682.804 does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(d) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087–1)

§§ 682.806–682.829 [Reserved]

§ 682.830 Audit standards.

(a) An Authority that is a governmental entity must be audited regarding its lending and loan purchasing program for compliance with its Plan and the provisions of § 682.801 in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.

(b) An Authority that is a nonprofit organization must undergo an audit of its lending and loan purchasing program for compliance with its Plan and the provisions of § 682.801—

(1) Conducted in accordance with OMB Circular A–133 and any supplementary compliance guidelines issued by OMB and the Secretary; or

(2) If the Authority qualifies to submit a program-specific audit under criteria in OMB Circular A–133 and chooses to have such an audit performed, conducted in accordance with standards issued by the General Accounting Office (GAO) publication, *Government Auditing Standards*, and by the Office of Inspector General of the Department contained in the applicable audit guide.

(c) The audit must be conducted annually and the audit report must be submitted within 30 days of the completion of the audit report but no later than six months after the close of the audit period.

(d) Audits must be submitted to the regional office of the Office of Inspector General of the Department, to the Governor who approved the Plan of the Authority, and to the principal guaranty agency consulted by the Governor in approving that Plan.

(Authority: 20 U.S.C. 1082, 1087–1)

§§ 682.831–682.839 [Reserved]

§ 682.840 Prohibition against discrimination as a condition for receiving special allowance payments.

(a) For an Authority to receive special allowance payments on loans made or acquired with the proceeds of a tax-exempt obligation, the Authority or its agent may not engage in any pattern or practice that results in a denial of a borrower's access to loans under the FFEL programs because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular institution within the area served by the Authority, length of the borrower's education program, or the borrower's academic year in school.

(b) The Secretary considers an Authority that makes or acquires loans guaranteed by an agency or organization that discriminates on one or more grounds listed in paragraph (a) of this section to have adopted a practice of denying access to loans on that ground unless the Authority makes provision for loan guarantees from other sources necessary to serve the borrowers excluded by that discriminatory policy.

(Authority: 20 U.S.C. 1082, 1087–1)

Appendix A—Standards for Acceptable Refund Policies by Participating Schools

For purposes of § 682.606(b), the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students. The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) Institutions should seek consumer views in the process of establishing and amending charge and refund structures. Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students. Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment to the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials. Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules. Institutions determine on an individual basis which of their charges are refundable or non-refundable. In general, admissions fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g., tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) Institutions should refund housing rental charges, less a deposit, so long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students. Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) Institutions should refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee. It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) The institutional tuition refund policy for an academic period should include the following minimum guidelines:

A. The institution should refund 100 percent of the tuition charges, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.

B. The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period. It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless State law imposes a more restrictive refund policy.

(IX) The institution should assess no penalty charges where the institution, as opposed to the student, is in error. The institution has assessed charges in error. Penalty charges, such as those involving late registration fees, change of schedule fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institution officer. A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) Institutions should pay or credit refunds due on a timely basis. The definition of "timely basis" should include the time required to process a formal student request for refund, to process a check if required, and to allow for mail delivery, when necessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) Institutions should publicize, as a part of their dissemination of information on

charges and refunds, that an appeal process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible. Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

Appendix B—Student Status Confirmation Report

This appendix sets forth the model format and data elements for guarantee agencies to use in implementing a manual or automated Student Status Confirmation Report system as required by § 682.401(b)(18).

Student Status Confirmation Report

DATE: MM/DD/YY *GUARANTOR/ INSTITUTION CODE:* (must accommodate eight numeric characters)

GUARANTOR/INSTITUTION NAME:

SOCIAL SECURITY NUMBER NAME PERMANENT ADDRESS
CORRECTION CORRECTION CORRECTION
**STATUS EFFECTIVE DATE ANTICIPATED GRADUATION DATE*

CORRECTION

*The valid enrollment status codes are as follows:
F=Full-time
H=Half-time or more but less than full-time.
L=Less than half-time. This code is used to specify students enrolled less than half-time.
X=Never attended the institution. This code is to specify those individuals on whose behalf a Stafford, SLS, or PLUS loan was made who enrolled in school but never attended classes.
Z=No record found. A thorough search of the institution's enrolled records revealed no information for this individual.
D=Deceased
A=Approved leave of absence
G=Graduated
W=Withdrawn

COMPLETED BY:
NAME
TITLE
TELEPHONE NUMBER
CERTIFICATION DATE

The following definitions apply to the SSCR data elements.

Data element	Definition
Date: MM/DD/YY	Date report is run and considered to be issued to school.
Social security number.	Valid 9-digit SSN assigned by Social Security Administration to student borrower or student on whose behalf a PLUS loan was borrowed.
Name	Last name, first name and middle initial of student borrower or student on whose behalf a PLUS loan was borrowed.
Address	Last known permanent address of student.
Anticipated graduation date.	Date recorded on agency's system. Please note any corrections to this date.
Effective date	Effective date of status reported, as follows: Full-time status, no record found and never attended—the report certification date. Half-time status—(1) the date the student dropped below full-time, or (2) if half-time status is the original enrollment status, the report certification date. Less than half-time status—the date the student dropped below half-time. Leave of absence—the date the student began a leave of absence approved in accordance with § 682.605(c). Graduated—the date the student completed the course requirements (not the date of the presentation of the diploma). Withdrawn—the date the student officially withdrew as determined by the school in accordance with § 682.605(b).
Certification date	The date the institution completed the SSCR.
Other information	Please note any corrections to SSN, name, or permanent address of which you are aware. Please note the effective date of this information to avoid replacing newer information with old.

Appendix C—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L-77a]

Note: The following is a reprint of Bulletin L-77a, issued on January 7, 1983, with minor modifications made to reflect changes in the program regulations since that date. All references to "the date of this bulletin" refer to that date. All references made to the Federal Insured Student Loan Program (FISLP) shall be understood to include the Federal PLUS Program. The bulletin includes references to the 120- and 180-day default periods that used to apply to FFELP and PLUS Program loans. Public Law 99-272 established new default periods of 180 and 240 days (as set out in 34 CFR 682.200 of these regulations) for all new loans and many existing ones. Although the discussion in this Appendix C refers to the 120- and 180-day default periods, it is equally applicable to the new 180- and 240-day default periods.

Introduction

This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("due diligence") and timely filing of claims under the Federal Insured Student Loan Program (FISLP), and (2) to repay interest and special allowance overbillings made on loans evidencing such violations. See 34 CFR 682.507, 682.511.[1] These procedures allow for the reinstatement of a lender's eligibility for interest and special allowance and claim payments on loans evidencing such violations, under specified circumstances. These procedures apply to loans for which the first day of the 120-day or 180-day default period occurred on or after October 21, 1979 (the effective date of the September 17, 1979 regulations), whether or not the loans have previously been submitted as claims to the Secretary.

The due diligence and timely filing requirements governing the FISLP were established in response to requests from some lenders for more detailed regulatory guidance on the proper handling of FISLP loans. Despite the promulgation of these provisions, a number of lenders have failed to exercise the requisite care in their treatment of these loans, thereby increasing the risk of default thereon and, in many cases, prejudicing the Secretary's ability to collect from the borrowers. At the time the current due diligence and timely filing rules were issued, the Secretary anticipated that violations of these rules would be so infrequent as to permit requests for cures to be handled individually. However, the unexpectedly high incidence of violations of these rules has made continued case-by-case treatment of all cure requests administratively unmanageable. After carefully considering the views of lenders and other program participants, the Secretary has decided to exercise his authority under 20 U.S.C. 1082(a)(5), (6), and institute uniform procedures by which lenders with loans involving violations of the due diligence or timely filing requirements may cure these violations.

Due Diligence

Collection activity is required to begin immediately upon delinquency by the borrower in honoring the repayment obligation. This holds true whether or not the borrower received a repayment schedule or signed a repayment agreement. Under 34 CFR 682.200, default on a FISLP loan occurs when a borrower fails to make a payment when due, provided this failure persists for 120 days for loans payable in monthly installments, or for 180 days for loans payable in less frequent installments. If, however, the lender has added the optional provision to the promissory note requiring the borrower to execute a repayment agreement not later than 120 days prior to the expiration of the grace period, the loan entered repayment prior to September 4, 1985 (see 50 FR 35970), the lender sends the agreement to the borrower 150 days or more before the end of the grace period, and the agreement is not executed before the end of the grace period, default occurs at that time. One exception to this rule is as follows: If the holder of the loan is not the lender that made the loan, the holder may choose to forego enforcement of the optional 120-day provision in the note.

The 120/180 day default period applies regardless of whether payments were missed consecutively or intermittently. For example,

if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the default period begins on February 1st, with the first delinquency, and ends on August 1st, when the April 1st payment becomes 120 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, *prior* to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.211. The forebearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

Timely Filing

The 90-day filing period applicable to FISLP default claims is set forth in 34 CFR 682.511(e) (1) and (3). The 90-day filing period begins at the end of the 120/180 day default period. The lender must file a default claim on a loan in default by the end of the filing period, unless the borrower brings the account current before the end of the filing period. In such a case, the lender may choose not to file a claim on the loan at that time.

In addition, for any loan less than 210 days delinquent on the date of this bulletin, the lender need not file a claim on that loan before the 210th day of delinquency (120-day default period plus 90-day filing period) if the borrower brings the account less than 120 days delinquent before such 210th day. Thus, in the above example, if the borrower makes the April 1st payment on August 2nd, the 90-day filing period continues to run from August 1st, unless the loan was less than 210 days delinquent on the date of this bulletin. If the loan was less than 210 days delinquent on the date of this bulletin, then the August 2nd payment makes the loan 91 days delinquent, and the lender may, but need not file a default claim on the loan at that time. If, however, that loan again becomes 120 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 120 days delinquent prior to the end of that 90 day period). In other words, for any loan less than 210 days delinquent on the date of this bulletin, the Secretary will permit a lender to treat payments made during the filing period as "curing" the default if such payments are sufficient to make the loan less than 120 days delinquent.

If a lender fails to comply with either the due diligence or timely filing requirements, the affected loan ceases to be insured; that is, the lender loses its right to receive interest benefits, special allowance and claim payments thereon. Some examples of violations of the due diligence requirements are set out in section I.C. below.

I. Cure Procedures

A. Definitions

The following definitions apply to terms used throughout Section I of this bulletin.

Full payment means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $30 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $15 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $30, or two $15 payments in accordance with original repayment schedule or agreement.)

Reinstatement with respect to insurance coverage means the reinstatement of the lender's right to receive default, death, disability, or bankruptcy claim payments for the unpaid principal balance of the loan and for unpaid interest accruing on the loan after the date of reinstatement. Upon reinstatement of insurance, the borrower regains the right to receive forbearance or deferments, as appropriate. For purposes of this bulletin, "reinstatement" with respect to insurance on a loan does not include reinstatement of the lender's right to receive interest and special allowance payments on that loan. Reinstatement of the lender's right to receive interest and special allowance payments is addressed in section I.B.1, below.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations. For any loan on which a cure is attempted under this bulletin, the lender may resume billing for interest and special allowance on the loan only for periods following the earlier of (1) its receipt of the equivalent of three full payments thereon, after the date of this bulletin or the date of the violation, whichever is later, or (2) receipt by the borrower of an authorized deferment, after reinstatement of insurance coverage.

2. Reservation of the Secretary's Right to Strict Enforcement. While this bulletin allows cures to be attempted for particular violations in specified ways, the Secretary retains the option of refusing to permit or recognize cures in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of the due diligence or timely filing rules, and in cases where the best interests of the program otherwise require strict enforcement of these requirements. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulations.

3. Applicability of the Cure Procedures to Particular Classes of Loans. The cure procedures outlined in this bulletin apply only to a loan for which the first day of the 120/180 day default period that ended with default by the borrower occurred on or after October 21, 1979, and which involve violations *only* of the due diligence and/or timely filing requirements.

The cure procedures applicable to loans involving due diligence violations also apply to loans involving violations of both the timely filing and due diligence requirements.

4. Excusal of Certain Due Diligence Violations. A lender whose claim was previously denied *solely* for violation of the timely filing rule, and who is permitted to cure that violation under the procedures set out in this bulletin, will not be required to utilize the procedures for curing due diligence violations, or to repay interest and special allowance improperly received from the Secretary as a result of a due diligence violation for periods prior to the timely filing violation. This applies even if, upon submission of the "cured" claim, the Secretary discovers that evidence of due diligence violations appeared in the file of the previously rejected claim.

The Secretary will also excuse a due diligence violation by a lender if the account was brought current by the borrower (or another, other than the lender, on the borrower's behalf) prior to the 120th/180th day of the delinquency period during which the violation occurred.

5. Treatment of Accrued Interest on "Cured" Claims—a. Due Diligence Violations. For any default claim involving "cured" violations of the due diligence rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the first day of the 120/180 day period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any loan involving "cured" due diligence violations, the lender may capitalize unpaid interest accruing on the loan from the commencement of the 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct this capitalized interest from the amount of the claim. This deduction must be reflected in column 15 on the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

b. Timely Filing Violations. For any default claim involving "cured" violations of the timely filing rules, the Secretary will not reimburse the lender for unpaid interest accruing after the end of the 120/180 day default period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any default claim involving a "cured" timely filing violation, if insurance coverage is later reinstated, the lender may capitalize unpaid interest accruing on the loan from the commencement of the original 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim, on that loan, the lender must deduct this capitalized interest from the amount of the claim, except that the lender need not deduct from the claim unpaid interest that accrued on the loan

during the original 120/180 day default period. This deduction must be reflected in Column 15 of the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

Some timely filing cures will not reinstate insurance coverage. For treatment of accrued interest in such cases, see Section I.D.1.c.

6. Documents to be Submitted with "Cured" Claims. The Secretary requests that any lender submitting a claim on a loan involving "cured" violations identify the claim as such with a note in the claim file stapled to the new ED Form 1207.

For all "cured" claims, the lender must submit:

- For loans on which a claim was previously rejected, all documents sent by the regional office with the original claim (when the claim was rejected and returned to the lender), including without limitation, the original ED Form 1207 and all documents showing the reason(s) for the original rejection;
- All documents ordinarily required in connection with the submission of a default claim, including, without limitation, the promissory note, which must bear a valid assignment to the United States of America;
- A new ED Form 1207; and
- All documents showing that the lender has complied with the applicable cure procedures and requirements.

C. Cures for Violations of the Due Diligence in Collection Requirements (34 CFR 682.507)

A violation of the due diligence in collection rules occurs when a lender fails to meet requirements found in 34 CFR 682.507. For example, a violation occurs if the lender fails to:

- Remind the borrower of the date a missed payment was due within 15 days of delinquency;
- Attempt to contact the borrower and any endorser at least 3 times at regular intervals during the rest of the 120/180 day default period;
- Request preclaims assistance from the Department of Education;
- Request skip-tracing assistance from the Secretary, if required, or
- Send a final demand letter to the borrower exercising the option to accelerate the due date for the outstanding balance of the loan, unless the lender does not know the borrower's address as of the 90th day of delinquency.

1. Reinstatement of Insurance Coverage. In the case of a due diligence violation, the lender may utilize either of the two procedures described below for obtaining reinstatement of insurance coverage on the loan. After the date of this bulletin, or after the date of the violation, whichever is later:

(a) The lender obtains a new repayment agreement signed by the borrower which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(7); or

(b) The lender obtains 3 full payments. If the borrower later defaults, the lender must submit evidence of these payments (e.g., copies of the checks) with the claim.

2. Borrower's Deemed Current As of Date of Cure. On the date the lender receives a signed copy of the new repayment agreement, or receives the third (curing) payment, insurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection procedures set out in 34 CFR 682.507, and the timely filing requirements set out in 34 CFR 682.511.

D. Cures for Violations of the Timely Filing Requirements (34 CFR 682.511)

1. Default Claims.—a. Reinstatement of Insurance Coverage. In order to obtain reinstatement of insurance coverage on a loan in the case of a timely filing violation, the lender must first locate the borrower after the date of this bulletin, or after the date of the violation, whichever is later (see section I.D.1.d. for description of acceptable evidence of location). Then, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 30 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 working days thereafter, send the borrower a copy of the attached "48 hour" collection letter, on the lender's letterhead. (See attachment A.)

b. Borrower Deemed Current Under Certain Circumstances. If, within 45 days after the lender sends the new repayment agreement to the borrower for signature, the borrower makes a full payment or signs and returns the new repayment agreement, insurance coverage on the loan is reinstated. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection steps in 34 CFR 682.507 and the timely filing requirements in 34 CFR 682.511.

c. Borrower Deemed in Default Under Certain Circumstances. If the borrower does not make a full payment, or sign and return the new repayment agreement, within 45 days after the lender sends the new repayment agreement, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan accompanied by acceptable evidence of location (see I.D.I.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(i) Postal receipt signed by the borrower not more than 25 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; *or*

(ii) A completed "Certification of Borrower Location" form (Attachment B).

2. Death, Disability, and Bankruptcy Claims. Lenders may immediately resubmit any death or disability claim which was rejected solely for failure to meet the 60 day timely filing requirements (see 34 CFR 685.511(e)(2)). However, the Secretary will not pay any such claim if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the due diligence or timely filing requirements applicable to default claims with respect to that loan. Interest that accrued on the loan after the expiration of the 60-day filing period remains uninsured by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to *bankruptcy* claims causes irreparable harm to the Secretary's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to permit cures for violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy. In that case, the lender shall treat the loan as in default. The Secretary will honor a default claim later filed on such a loan only if the lender has met the cure requirements in section I.C. above for due diligence violations.

II. Repayment of Interest and Special Allowance on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

A. General Rule

It has always been the Secretary's interpretation of the FISLP statute and regulations that a lender's right to receive interest and special allowance payments on a FISLP loan terminates immediately following the lender's violation of the due diligence or timely filing requirements. This applies whether or not the lender has filed a claim on the loan. In other words, lenders may receive interest and special allowance only on loans which are insured by the Secretary. Since these violations result in the termination of insurance, they also result in the termination of FISLP benefits.

B. Cessation of Billing on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

Any lender currently billing the Secretary for interest and special allowance on a loan that the lender knows involves a due diligence or timely filing violation must cease doing so immediately. However, lenders are not required at this time to review their loan portfolios for due diligence and timely filing violations.

C. Determination of Amounts of Interest and Special Allowance That Must Be Repaid

1. Due Diligence Violations. In the case of due diligence violations, it is often difficult to ascertain the precise date on which a violation occurred. For the administrative ease of the Secretary and lenders, the Secretary has decided to waive his right to recoup interest and special allowance payments made to a lender for periods between the date of a due diligence violation and the end of the 120/180 day default period. However, any lender that has received interest or special allowance payments from the Secretary for periods after the end of the 120/180 day default period on a loan that the lender *knows* involves a due diligence violation must promptly repay those amounts.

2. Timely Filing Violations. In the case of timely filing violations, the lender loses its right to receive interest and special allowance payments as of the expiration of the applicable timely filing period. Therefore, any lender that has received interest or special allowance payments from the Secretary for periods following the end of the applicable timely filing period on a loan that the lender knows involves a timely filing violation must repay those amounts.

3. Situations in Which a Lender May Have Received Interest Benefits for Periods During Which a Loan was Uninsured. Because most due diligence violations, and timely filing violations, occur after termination of the grace period, interest payments are ordinarily not affected by such violations. However, there are three types of situations in which a lender may have received interest payments from the Secretary to which it was not entitled due to a due diligence or timely filing violation.

a. Promissory notes that include a requirement that the borrower sign a repayment agreement no later than 120 days prior to the expiration of the grace period. In such cases, a due diligence violation may occur during the grace period, when the lender may otherwise have been eligible to receive interest benefits. However, the lender need not repay that interest to the Secretary. See II.C.1. above.

b. Deferment Periods. A due diligence violation may occur prior to a deferment period when the lender would otherwise have been eligible to receive interest benefits.

c. Loans Made Prior to December 15, 1968. A loan disbursed prior to December 15, 1968, and which qualified for payment of Federal interest benefits at the time the loan was disbursed, qualifies for payment of a 3 percent interest subsidy on the unpaid principal balance during the entire repayment period, provided the loan remains insured. In the case of such a loan, a due diligence or timely filing violation terminates the lender's eligibility for the 3 percent payments.

D. Procedures for Repayment of Federal Interest Benefits and Special Allowance Received by a Lender for Periods During Which a Loan Was Uninsured

A lender must make the repayments of interest and/or special allowance discussed in II.C. above, by way of an adjustment during the two quarters immediately following the discovery of the violation. These adjustments must be reported on the normal Lender's Interest and Special Allowance Request and Report (ED Form 799). Lenders are requested not to send a check with the adjustment; the overpaid amount will be deducted by the Secretary from the lender's next regular interest and special allowance payment. For five years after any loan for which an adjustment is made is repaid in full, the lender shall retain a record of the basis for the adjustment showing the amount(s) of the overbilling(s), and the date it used for cessation of interest or special allowance eligibility in calculating the overbilled amount. See 34 CFR 682.515(a)(2).

Attachments.

[1] All references to the program regulations are to part 682 of title 34 of the Code of Federal Regulations (34 CFR part 682).

Attachment A

BILLING CODE 4000-01-M

NOTICE

TO:

_____
Date

_____
Social Security Number

You have previously been notified that you are severely delinquent in repaying your Federal Family Education Loan. This notice is our final effort to remedy this delinquency. You must contact us at _____ within

48 HOURS

Failure to act upon this notice will result in transfer of your account to the Federal Government.

_____
Official of Lender

_____
Title

BILLING CODE 4000-01-C

Attachment B

Certification of Borrower Location

As an employee or agent of

Name and Address of Lender

I hereby certify as follows:

1. On (Date), I spoke with or received written communication from (copy attached):

(Circle a or b)

(a) the borrower on the loan underlying the default claim, or

(b) a parent, spouse, or sibling of the borrower.

2. The borrower, parent, spouse, or sibling represented to me that the borrower's address and telephone number are—_____.

Address and Telephone Number

3. Within 15 days thereafter, this institution sent the borrower a new repayment agreement along with a collection letter of the type described in section I.D.1.a.ii of Bulletin L–77a, dated January 7, 1983, to the address set out in 2, above.

4. (Applicable only if 1(b), above, is used.) The letter and agreement referenced in 3, above, has not been returned undelivered.

Name of Borrower

Borrower's SSN

Signature of Employee or Agent

Typed Name of Employee or Agent

Title of Employee or Agent

Date

Lender Identification Number

Appendix D—Policy for Waiving the Secretary's Right To Recover or Refuse To Pay, Interest Benefits, Special Allowance, and Reinsurance on Stafford, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin 88–G–138].

Note: The following is a reprint of Bulletin 88–G–138, issued on March 11, 1988, with modifications made to reflect changes in the program regulations. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until three years after the default claim filing deadline.

Introduction

This letter sets forth the circumstances under which the Secretary, pursuant to sections 432(a) (5) and (6) of the Higher Education Act of 1965 and 34 CFR §§ 682.406(b) and 682.413(f), will waive certain of his rights and claims with respect to Stafford Loans, PLUS, Supplemental Loans for Students (SLS), and Consolidation Program loans made under a guaranty agency program that involve violations of Federal regulations pertaining to due diligence in collection or timely filing. (These programs are collectively referred to in this letter as the FFEL Programs.) This policy applies to due diligence violations on loans for which the first day of delinquency occurred on or after March 10, 1987 (the effective date of the November 10, 1986 due diligence regulations) and to timely filing violations occurring on or after December 26, 1986, whether or not the affected loans have been submitted as claims to the guaranty agency.

The Secretary has been implementing a variety of regulatory and administrative actions to minimize defaults in the FFEL Programs. As a part of this effort, the Secretary published final regulations on November 10, 1986 requiring lenders and guaranty agencies to undertake specific due diligence activities to collect delinquent and defaulted loans, and establishing deadlines for the filing of claims by lenders with guaranty agencies. In recognition of the time required for agencies and lenders to modify their internal procedures, the Secretary delayed for four months the date by which lenders were required to comply with the new due diligence requirements. Thus, § 682.411 of the regulations, which established minimum due diligence procedures that a lender must follow in order for a guaranty agency to receive reinsurance on a loan, became effective for loans for which the first day of delinquency occurred on or after March 10, 1987. The regulations make clear that compliance with these minimum requirements, and with the new timely filing deadlines, is a condition for an agency's receiving or retaining reinsurance payments made by the Secretary on a loan. See 34 CFR 682.406(a)(2), (a)(4), 682.413(b)(1). The regulations also specify that a lender must comply with § 682.411 and with the applicable filing deadline, as a condition for its right to receive or retain interest benefits and special allowance on a loan for certain periods. *See* 34 CFR 682.300(b)(2)(vi), 682.413(a)(1).

The Department has received inquiries regarding the procedures by which a lender may "cure" a violation of § 682.411 regarding diligent loan collection, or of the 45-day deadline for the filing of default claims found in § 682.406(a)(4), in order to reinstate the agency's right to reinsurance, and the lender's right to interest benefits and special allowance. Preliminarily, please note that, absent an exercise of the Secretary's waiver authority, a guaranty agency may not receive or retain reinsurance payments on a loan on which the lender has violated the Federal due diligence or timely filing requirements, even if the lender has followed a cure procedure established by the agency. Under §§ 682.406(b) and 682.413(f), the Secretary—not the guaranty agency—decides whether to reinstate reinsurance coverage on a loan involving such a violation, or any other violation of Federal regulations. A lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. See §§ 682.406(a)(5); and 682.413(b). As §§ 682.406(a)(6) and 682.413(b) make clear, a guaranty agency's cure procedures are relevant to reinsurance coverage only insofar as they allow for cure of violations of requirements established by the *agency* affecting the loan insurance it provides to lenders. In addition, all such requirements must be submitted to the Secretary for review and approval, under 34 CFR 682.401(d).

References throughout this letter to "due diligence and timely filing" rules, requirements, and violations should be understood to mean only the Federal rules cited above, unless the context clearly requires otherwise.

A. Scope

This letter outlines the Secretary's waiver policy regarding certain violations of Federal due diligence or timely filing requirements on a loan insured by a guaranty agency. Unless your agency receives notification to the contrary, or the lender's violation involves fraud or other intentional misconduct, you may treat as reinsured any otherwise reinsured loan involving such a violation that has been cured in accordance with this letter.

B. Duty of a Guaranty Agency to Enforce Its Standards

As noted above, a lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. Thus, as a general rule, an agency that fails to enforce such a requirement and pays a default claim involving a violation is not eligible to receive reinsurance on the underlying loan. However, in light of the waiver policy outlined below, which provides more stringent cure procedures for violations occurring on or after May 1, 1988 than for pre-May 1, 1988 violations, some guarantee agencies with more stringent policies than the policy outlined below for the pre-May 1 violations have indicated that they wish to relax their own policies for violations of agency rules during that period. While the Secretary does not encourage any agency to do so, the Secretary will permit an agency to take either of the following approaches to its enforcement of its own due diligence and timely filing rules for violations occurring before May 1, 1988.

(1) The agency may continue to enforce its rules, even if they result in the denial of guarantee coverage by the agency on otherwise reinsurable loans; *or*

(2) The agency may decline to enforce its rules as to any loan that would be reinsured under the retrospective waiver policy outlined below. In other words, for violations of a guaranty agency's due diligence and timely filing rules occurring before May 1, 1988, a guaranty agency is authorized, but not required, to retroactively revise its own due diligence and timely filing standards to treat as guaranteed any loan amount that is reinsured under the retrospective enforcement policy outlined in section I.C.1., below. However, for any violation of an agency's due diligence or timely filing rules occurring on or after May 1, 1988, the agency must resume enforcing those rules in accordance with their terms, in order to receive reinsurance payments on the underlying loan. For these post-April 30 violations, and for any other violation of an agency's rule affecting its guarantee coverage,

the Secretary will treat as reinsured all loans on which the agency has engaged in, and documented, a case-by-case exercise of reasonable discretion allowing for guarantee coverage to be continued or reinstated notwithstanding the violation. But any agency that otherwise fails, or refuses, to enforce such a rule does so without the benefit of reinsurance coverage on the affected loans, and the lenders continue to be ineligible for interest benefits and special allowance thereon.

C. Due Diligence

Under 34 CFR 682.200, default on a FFEL Program loan occurs when a borrower fails to make a payment when due, provided this failure persists for 180 days for loans payable in monthly installments, or for 240 days for loans payable in less frequent installments. The 180/240-day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the delinquency period begins on February 2nd, with the first delinquency, and default occurs on September 29th, when the April payment becomes 180 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

D. Timely Filing

The 90-day filing period applicable to FFEL Program default claims is set forth in 34 CFR 682.406(a)(5). The 90-day filing period begins at the end of the 180/240-day default period. The lender ordinarily must file a default claim on a loan in default by the end of the filing period. However, the lender may, but need not, file a claim on that loan before the 270th day of delinquency (180-day default period plus 90-day filing period) if the borrower brings the account less than 180 days delinquent before such 270th day. Thus, in the above example, if the borrower makes the April 1st payment on September 30th, that payment makes the loan 151 days delinquent, and the lender may, but need not, file a default claim on the loan at that time. If, however, the loan again becomes 180 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 180 days delinquent prior to the end of that 90-day period). In other words, the Secretary will permit a lender to treat payments made during the filing period as curing the default if such payments are sufficient to make the loan less than 180 days delinquent.

Section I of this letter outlines the Secretary's waiver policy for due diligence and timely filing violations. As noted above, to the extent that it results in the imposition of a lesser sanction than that available to the Secretary by statute or regulation, this policy reflects the exercise of the Secretary's authority to waive the Secretary's rights and claims in this area. Section II discusses the issue of the due date of the first payment on a loan, and the application of the waiver policy to that issue. Section III provides guidance on several issues related to due diligence and timely filing as to which clarification has been requested by some program participants.

I. Waiver Policy

A. Definitions

The following definitions apply to terms used throughout this letter:

Full payment means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $50 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $25 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $50, or two $25 payments in accordance with the original repayment schedule or agreement.) In the case of a payment made by cash, money order, or other means that do not identify the payor that is received by a lender after the date of this letter, that payment may constitute a "full payment" only if a senior officer of the lender or servicing agent certifies that the payment was not made by or on behalf of the lender or servicing agent.

Reinstatement with respect to reinsurance coverage means the reinstatement of the guaranty agency's right to receive reinsurance payments on the loan after the date of reinstatement. Upon reinstatement of reinsurance, the borrower regains the right to receive forbearance or deferments, as appropriate. "Reinstatement" with respect to reinsurance on a loan also includes reinstatement of the lender's right to receive interest and special allowance payments on that loan.

"Gap" in collection activity on a loan means:

(a) The period between the initial delinquency and the first collection activity;
(b) The period between collection activities (a request for preclaims assistance is considered a collection activity);
(c) The period between the last collection activity and default; or
(d) The period between the date a lender discovers a borrower has "skipped" and the lender's first skip-tracing activity.

Note: the concept of "gap" is used herein simply as one measure of collection activity. For loans subject to the FFEL and PLUS programs regulations published on November 10, 1986, not all gaps are violations of the due diligence rules.

Violation with respect to the due diligence requirements in § 682.411 means the failure to timely complete a required diligent phone contact effort, the failure to timely send a required letter (including a request for preclaims assistance), or the failure to timely engage in a required skip-tracing activity. If during the deliquency period, a gap of more than 45 days occurs (more than 60 days for loans with a transfer), the lender must satisfy the requirement outlined in I.D.1. for reinsurance to be reinstated. The day after the 45-day gap (or 60 for loans with a transfer) will be considered the date that the violation occurred.

Transfer means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations. For any loan on which a cure is required under this letter in order for the agency to receive any reinsurance payment, the lender may resume billing for interest and special allowance on the loan only for periods following its completion of the required cure procedure.

2. Reservation of the Secretary's Right to Strict Enforcement. While this letter describes the Secretary's general waiver policy, the Secretary retains the option of refusing to permit or recognize cures, or of insisting on strict enforcement of the remedies established by statute or regulation, in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of due diligence or timely filing rules, and in cases where the best interests of the United States otherwise require such strict enforcement. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. Interest, Special Allowance, and Reinsurance Repayment Required as a Condition for Exercise of the Secretary's Waiver Authority. The Secretary's waiver of the right to recover or refuse to pay reinsurance, interest benefits, or special allowance payments, and recognition of cures for due diligence and timely filing violations, are conditioned on the following:

(1) The guaranty agency and lender shall ensure that the lender repays all interest benefits and special allowance received on loans involving violations occurring prior to May 1, 1988, for which the lender is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing violations described in section I.E.1., below, by an adjustment to one of the next three quarterly billings for interest benefits and special allowance submitted by the lender in a timely manner after May 1, 1988. The guaranty agency's responsibility in this regard is satisfied by receipt of a

certification from the lender that this repayment has been made in full.

(2) The guaranty agency, on or before October 1, 1988, shall repay all reinsurance received on loans involving violations occurring prior to May 1, 1988, for which the agency is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing violations described in section I.E.1., below. Pending completion of the repayment described above, a lender or guaranty agency may submit billings to the Secretary on loans that are eligible for reinsurance under the waiver policy in this letter until it learns that repayment in full will not be made, or until the deadline for a repayment has passed without it being made, whichever is earlier. Of course, a lender or guaranty agency is prohibited from billing the Secretary for program payments on any loan amount that is not eligible for reinsurance under the waiver policy outlined in this letter. In addition to the repayments required above, any amounts received in the future in violation of this prohibition must immediately be repaid to the Secretary.

4. Applicability of the Waiver Policy to Particular Classes of Loans. The policy outlined in this letter applies only to a loan for which the first day of the 180/240-day default period that ended with default by the borrower occurred on or after March 10, 1987, or, in the case of a timely filing violation, December 26, 1986, and that involves violations only of the due diligence and/or timely filing requirements. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until three years after the default claim filing deadline.

5. Excuse of Certain Due Diligence Violations. Except as noted in section II, below, if a loan has due diligence violations but was later cured and brought current, those violations will not be considered in determining whether a loan was serviced in accordance with 34 CFR 682.411. In that case, the Secretary will only examine the due diligence performed in the 180 days of delinquency immediately before default. However, an examination of the activity that occurred with respect to the account before it began the 180-day delinquency period may be necessary to verify the repayment status of the loan at the beginning of the delinquency period.

6. Excuse of Timely Filing Violations Due to Performance of a Guaranty Agency's Cure Procedures. If, prior to May 1, 1988, and prior to the filing deadline, a lender commenced the performance of collection activities specifically required by the guaranty agency to cure a due diligence violation on a loan, the Secretary will excuse the lender's timely filing violation if the lender completes the additional activities within the time period permitted by the guaranty agency, and files a default claim on the loan not more than 45 days after completing the additional activities.

7. Treatment of Accrued Interest on "Cured" Claims. For any loan involving any violation of the due diligence or timely filing rules for which a "cure" is required under section I.C. or I.E., below, for the agency to receive a reinsurance payment, the Secretary will not reimburse the guaranty agency for any unpaid interest accruing after the date of the earliest unexcused violation occurring after the last payment received before the cure is accomplished, and prior to the date of reinstatement of reinsurance coverage. The lender may capitalize unpaid interest accruing on the loan from the date of the earliest unexcused violation to the date of the reinstatement of reinsurance coverage. However, if the agency later files a claim for reinsurance on that loan, the agency must deduct this capitalized interest from the amount of the claim. Some cures will not reinstate coverage. For treatment of accrued interest in such cases, see Section I.E.1.c., below.

C. Waiver Policy for Violations of the Federal Due Diligence in Collection Requirements (34 CFR 682.411

A violation of the due diligence in collection rules occurs when a lender fails to meet the requirements found in 34 CFR 682.411. However, if a lender makes all required calls and sends all required letters during any of the delinquency periods described in that section, the lender is considered to be in compliance with that section for that period, even if the letters were sent before the calls were made.

The special provisions for transfers set forth below apply whenever the violation(s) and, if applicable, the gap, were due to a transfer, as defined in section I.A., above.

1. Retrospective Period. For one or more due diligence violations occurring during the period March 10, 1987–April 30, 1988—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if no gap of 46 days or more (61 days or more for a transfer) exists.

b. If a gap of 46–60 days (61–75 days for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period are limited to amounts accruing through the date of default.

c. If a gap of 61 days or more (76 days or more for a transfer) exists, the borrower must be located after the gap, either by the agency or the lender, in order for reinsurance on the loan to be reinstated. (*See* section I.E.1.d., below, for a description of acceptable evidence of location.) In addition, if the loan is held by the lender or after March 15, 1988, the lender must follow the steps described in section I.E.1., or receive a full payment or a new signed repayment agreement, in order for the loan to again be eligible for reinsurance. The lender must repay all interest benefits and special allowance received for the period beginning with its earliest unexcused violation, occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

2. Prospective Period. For due diligence violations occurring on or after May 1, 1988——

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer.)

b. If there exists not more than 2 violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default.

However, the lender must complete all required activities before the claim filing deadline, except that a preclaims assistance request must be made before the 240th day of delinquency. If the lender fails to make this request by the 240th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 180 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exists 3 violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1., or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exists more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in section I.D.1., for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

D. Reinstatement of Reinsurance Coverage for Certain Egregious Due Diligence Violations

1. Cures. In the case of a loan involving violations described in section I.C.2.d., above, the lender may utilize either of the two procedures described below for obtaining reinstatement of reinsurance coverage on the loan.

a. After the violations occur, the lender obtains a new repayment agreement signed by the borrower. The repayment agreement must comply with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7); or

b. After the violations occur, the lender obtains one full payment. If the borrower later defaults, the guaranty agency must obtain evidence of this payment (e.g., a copy of the check) from the lender.

2. *Borrower Deemed Current as of Date of Cure.* On the date the lender receives a new signed repayment agreement or the curing payment under section I.D.1., above, reinsurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. The lender shall then follow the collection and timely filing requirements applicable to the loan.

E. Cures for Timely Filing Violations and Certain Due Diligence Violations

1. *Default Claims—a. Reinstatement of Insurance Coverage.* Except as noted in section I.B.6., in order to obtain reinstatement of reinsurance coverage on a loan in the case of a timely filing violation, a due diligence violation described in section I.C.2.c., or a due diligence violation described in section I.C.1.c. where the lender holds the loan on or after March 15, 1988, the lender must first locate the borrower after the gap, or after the date of the last violation, as applicable. (See section I.E.1.d. for description of acceptable evidence of location.) Within 15 days thereafter, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, that complies with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 15 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 days thereafter, diligently attempt to contact the borrower by telephone. Within 5–10 days after completing these efforts, the lender shall again diligently attempt to contact the borrower by telephone. Finally, within 5–10 days after completing these efforts, the lender shall send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guaranty agency.

b. Borrower Deemed Current Under Certain Circumstances. If, at any time on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., above, or the 180th day of delinquency, whichever is later, the lender receives a full payment or a new signed repayment agreement, reinsurance coverage on the loan is reinstated on the date the lender receives the full payment or new agreement. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default.

In the case of a timely filing violation on a loan for which the borrower is deemed current under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation to the date of reinstatement of reinsurance coverage on the loan.

c. Borrower Deemed in Default Under Certain Circumstances. If the borrower does not make a full payment, or sign and return the new repayment agreement, on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., above, or the 180th day of delinquency, whichever is later, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan, accompanied by acceptable evidence of location (see section I.E.1.d., below), within 30 days after the end of such 30-day period. Reinsurance coverage, and therefore the lender's right to receive interest benefits and special allowance, is not reinstated on a loan involving these circumstances. However, the Secretary will honor reinsurance claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, on unpaid interest as provided in section I.B.7., above, and for reimbursement of eligible supplemental preclaims assistance costs.

In the case of a timely filing violation on a loan for which the borrower is deemed in default under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(1) A postal receipt signed by the borrower not more than 15 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; or

(2) Documentation submitted by the lender showing—

(i) The name, identification number, and address of the lender;

(ii) The name and Social Security number of the borrower; and

(iii) A signed certification by an employee or agent of the lender, that—

(A) On a specified date, he or she spoke with or received written communication (attached to the certification) from the borrower on the loan underlying the default claim, or a parent, spouse, sibling, roommate, or neighbor of the borrower;

(B) The address and, if available, telephone number of the borrower were provided to the lender in the telephone or written communication; and

(C) In the case of a borrower whose address or telephone number was provided to the lender by someone other than the borrower, the new repayment agreement and the letter sent by the lender pursuant to section I.E.1.a., above, had not been returned undelivered as of 20 days after the date those items were sent, for due diligence violations described in section I.C.1.c. where the lender holds the loan on the date of this letter, and as of the date the lender filed a default claim on the cured loan, for all other violations.

2. Death, Disability, and Bankruptcy Claims. The Secretary will honor a death or disability claim on an otherwise eligible loan notwithstanding the lender's failure to meet the 60-day timely filing requirement (see 34 CFR 682.402(e)(2)(i)). However, the Secretary will not reimburse the guaranty agency if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the Federal due diligence or timely filing requirements applicable to that loan, except in accordance with the waiver policy described above. Interest that accrued on the loan after the expiration of the 60-day filing period remains ineligible for reimbursement by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary had determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims (§ 682.402(e)(2)(ii)) causes irreparable harm to the guaranty agency's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to excuse violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy, or, if previously discharged, has been the subject of a reversal of the discharge. In that case, the lender shall treat the loan as in default. The Secretary will not reimburse the guaranty agency for interest accruing beyond the filing deadline for the bankruptcy claim.

II. Due Date of First Payment

Section 682.411(b) refers to the "due date of the first missed payment not later made" as one way to determine the first day of delinquency on a loan. Section 682.209(a)(3) states that, generally, the repayment period on a FFEL programs loan begins some number of months after the month in which the borrower ceases at least half-time study. Where the borrower enters the repayment period with the lender's knowledge, the first payment due date may be set by the lender, provided it falls within a reasonable time after the first day of the month in which the repayment period begins. In this situation, the Secretary generally permits a lender to allow the borrower up to 45 days from the first day of repayment to make the first payment.

In cases where the lender learns that the borrower has entered the repayment period after the fact, current § 682.411 treats the 30th day after the lender receives this information as the first day of delinquency. In the course of discussion with lenders, the Secretary has learned that many lenders have not been using the 30th day after receipt of notice that the repayment period has begun ("the notice") as the first payment due date. In recognition of this apparently widespread practice, the Secretary has decided that, both retrospectively and prospectively, a lender should be allowed to establish a first payment due date within 60 days after receipt of the notice, to capitalize interest accruing up to the first payment due date, and to exercise forbearance with respect to

the period during which the borrower was in the repayment period but made no payment. In effect, this means that, if the lender sends the borrower a coupon book, billing notice, or other correspondence establishing a new first payment due date, on or before the 60th day after receipt of the notice, the lender is deemed to have exercised forbearance up to the new first payment due date. The new first payment due date must fall no later than 75 days after receipt of the notice. In keeping with the 5-day tolerance permitted under section I.C.2.a., for the "prospective period", a lender that sends the above-described material on or before the 65th day after receipt of the notice will be held harmless. However, a lender that does so on the 66th day will have failed by more than 5 days to send both of the collection letters required by § 682.411(c) to be sent within the first 20 days of delinquency, and will thus have committed *two* violations of more than five days of that rule.

If the lender fails to send the material establishing a new first payment due date on or before the 65th day after receipt of the notice, it may thereafter send material establishing a new first payment due date falling not more than 45 days after the materials are sent, and will be deemed to have exercised forbearance up to the new first payment due date. However, all violations and gaps occurring prior to the date on which the material is sent are subject to the waiver policies described in section I for violations falling in either the retrospective or prospective periods. This is an exception to the general policy set forth in section I.B.5., above, that only violations occurring during the most recent 180 days of the delinquency period on a loan are relevant to the Secretary's examination of due diligence.

III. Questions and Answers

The waiver policy outlined in this letter was developed after extensive discussion and consultation with participating lenders and guarantee agencies. In the course of these discussions, lenders and agencies raised a number of questions regarding the due diligence rules as applied to various circumstances. The Secretary's responses to these questions are set forth below.

Q: Section 682.411 of the program regulations requires the lender to make "diligent efforts to contact the borrower by telephone" during each 30-day period of delinquency beginning after the 30th day of delinquency. What must a lender do to comply with this requirement?

A: Generally speaking, one actual telephone contact with the borrower, or two attempts to make such contact on different days and at different times, will satisfy the "diligent efforts" requirement for any of the 30-day delinquency periods described in the rule. However, the "diligent efforts" requirement is intended to be a flexible one, requiring the lender to act on information it receives in the course of attempting telephone contact regarding the borrower's actual telephone number, the best time to call to reach the borrower, etc. For instance, if the lender is told during its second telephone contact attempt that the borrower can be reached at another number or at a different time of day, the lender must then attempt to reach the borrower by telephone at that number or that time of day.

Q: What must a lender do when it receives conflicting information regarding the date a borrower ceased at least half-time study?

A: A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has.

Q: If a loan is transferred from one lender to another, is the transferee held responsible for information regarding the borrower's status that is received by the transferor but is not passed on to the transferee?

A: No. A lender is responsible only for information received by its agents and employees. However, if the transferee has reason to believe that the transferor has received additional information regarding the loan, the transferee must make a reasonable inquiry of the transferor as to the nature and substance of that information.

Q: What are a lender's due diligence responsibilities where a check received on a loan is dishonored by the bank on which it was drawn?

A: Upon receiving notice that a check has been dishonored, the lender shall treat the payment as having never been made for purposes of determining the number of days delinquent that the borrower is at that time. The lender must then begin (or resume) attempting collection on the loan in accordance with § 682.411, commencing with the first 30-day delinquency period described in § 682.411 that begins after the 30-day delinquency period in which the notice of dishonor is received. The same result obtains when the lender successfully obtains a delinquent borrower's correct address through skip-tracing, or when a delinquent borrower leaves deferment or forbearance status.

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December 18, 1992

Part III

Department of Education

34 CFR Part 12

Disposal and Utilization of Surplus Federal Real Property for Educational Purposes; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 12

RIN 1880-AA27

Disposal and Utilization of Surplus Federal Real Property for Educational Purposes

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Disposal and Utilization of Surplus Federal Real Property for Educational Purposes. These amendments are needed to clarify certain provisions in the current regulations. These regulations increase the accountability of recipients of surplus Federal real property to the United States in their use of that property and clarify the requirements of the program.

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

FOR FURTHER INFORMATION CONTACT: David B. Hakola, U.S. Department of Education, Office of the Administrator for Management Services, (room 3005, MS 4532), 400 Maryland Avenue, SW., Washington, DC 20202-4532. Tel. (202) 401-0500. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Disposal and Utilization of Surplus Federal Real Property for Educational Purposes regulations are authorized by the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*) (Act). The Secretary is authorized to request the Administrator of the General Services Administration (GSA) to assign surplus Federal real property to the Secretary for sale or lease to eligible entities for educational purposes. As a credit against the fair market sale or lease value of the property, the transferee or lessee may be granted up to a 100% public benefit allowance (PBA) based upon the type of educational organization it is and the proposed educational use of the surplus Federal real property. Property is conveyed as either off-site or on-site surplus Federal real property. Off-site property is property capable of being removed from the land (e.g., improvements, small buildings, etc.) and does not include the underlying land. In contrast, on-site property generally consists of a parcel of land which is conveyed together with fixtures and other improvements thereon. The conveyance instrument used by the Secretary contains conditions, restrictions, reservations, and covenants with which the transferee or lessee must comply in order to retain title or possession of the surplus Federal real property. The Act directs the Secretary of Education to enforce compliance with the terms and conditions contained in the conveyance instrument and to take corrective action in the case of noncompliance. For on-site property, the Secretary's oversight responsibility may last up to 30 years, while for off-site property it lasts for the useful economic life of the property.

On October 31, 1990 the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (55 FR 45971). A discussion of the major issues was addressed in the NPRM at 55 FR 45972.

Since publication of the NPRM, the only changes to the regulations were to correct editorial and technical errors in the PBA table in appendix A. These are discussed in the following section.

Analysis of Comments and Changes

In the NPRM the Secretary invited comments on the proposed regulations. The only substantive comment the Secretary received suggested a change in eligibility to include American Indian tribes. The Secretary is not legally authorized to make this change under 40 U.S.C. 484(k)(1)(A). However, the Secretary has reviewed the regulations since publication of the NPRM and has made changes as follows:

Discussion: Departmental review of the NPRM resulted in editorial and technical revisions to correct errors in the organizational allowances section of Appendix A (Public Benefit Allowance for Transfer of Surplus Federal Real Property for Educational Purposes).

Changes: The 10% allowance given for accreditation for elementary or high schools has been deleted to remove the impression of preferential treatment between public and nonprofit schools within the same category. The percent allowed for inadequacy of existing school plant facilities is to remain unchanged from the current regulations.

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

List of Subjects in 34 CFR Part 12

Disposal and utilization of surplus real property, Education, Education Department, Federal buildings and facilities, Government property, Property reporting and recordkeeping requirements, Surplus government property.

(Catalog of Federal Domestic Assistance Number 84.145 Federal Real Property Assistance Program)

Editorial Note. This document was received at the Office of the Federal Register on December 10, 1992.

Dated: August 2, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 12 to read as follows:

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS FEDERAL REAL PROPERTY FOR EDUCATIONAL PURPOSES

Subpart A—General

Sec.
12.1 What is the scope of this part?
12.2 What definitions apply?
12.3 What other regulations apply to this program?

Subpart B—Distribution of Surplus Federal Real Property

12.4 How does the Secretary provide notice of availability of surplus Federal real property?
12.5 Who may apply for surplus Federal real property?
12.6 What must an application for surplus Federal real property contain?
12.7 How is surplus Federal real property disposed of when there is more than one applicant?
12.8 What transfer or lease instruments does the Secretary use?
12.9 What warranties does the Secretary give?

12.10 How is a Public Benefit Allowance (PBA) calculated?

Subpart C—Conditions Applicable to Transfers or Leases

12.11 What statutory provisions and Executive Orders apply to transfers of surplus Federal real property?
12.12 What are the terms and conditions of transfers or leases of surplus Federal real property?
12.13 When is use of the transferred surplus Federal real property by entities other than the transferee or lessee permissible?

Subpart D—Enforcement

12.14 What are the sanctions for noncompliance with a term or condition of a transfer or lease of surplus Federal real property?

Subpart E—Abrogation

12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

Appendix A to Part 12—Public Benefit Allowance for Transfer of Surplus Federal Real Property for Educational Purposes

Authority: 40 U.S.C. 471–488; 20 U.S.C. 3401 *et seq.*; 42 U.S.C. 2000d (1) *et seq.*; 20 U.S.C. 1681 *et seq.*; 29 U.S.C. 794 *et seq.*; 42 U.S.C. 4332.

Subpart A—General

§ 12.1 What is the scope of this part?

This part is applicable to surplus Federal real property located within any State that is appropriate for assignment to, or that has been assigned to, the Secretary by the Administrator for transfer for educational purposes, as provided for in section 203(k) of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*).

(Authority: 40 U.S.C. 484(k))

§ 12.2 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 472 of the Act:

Administrator
Surplus property

(b) *Definitions in the Education Department General Administrative Regulations (EDGAR).* The following terms used in this part are defined in 34 CFR 77.1:

Department
Secretary
State

(c) *Other Definitions*: The following definitions also apply to this part:

Abrogation means the procedure the Secretary may use to release the transferee of surplus Federal real property from the covenants, conditions, reservations, and restrictions contained in the conveyance instrument before the term of the instrument expires.

Act means the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*).

Applicant means an eligible entity as described in §12.5 that formally applies to be a transferee or lessee of surplus Federal real property, using a public benefit allowance (PBA) under the Act.

Lessee, except as used in §12.14(a)(5), means an entity that is given temporary possession, but not title, to surplus Federal real property by the Secretary for educational purposes.

Nonprofit institution means any institution, organization, or association, whether incorporated or unincorporated—

(1) The net earnings of which do not inure or may not lawfully inure to the benefit of any private shareholder or individual; and

(2) That has been determined by the Internal Revenue Service to be tax-exempt under section 501(c)(3) of title 26.

Off-site property means surplus buildings and improvements—including any related personal property—that are capable of being removed from the underlying land and that are transferred by the Secretary without transferring the underlying real property.

On-site property means surplus Federal real property, including any related personal property—other than off-site property.

Period of restriction means that period during which the surplus Federal real property transferred for educational purposes must be used by the transferee or lessee in accordance with covenants, conditions, and any other restrictions contained in the conveyance instrument.

Program and plan of use means the educational activities to be conducted by the transferee or lessee using the surplus Federal real property, as described in the application for that property.

Public benefit allowance ("PBA") means the credit, calculated in accordance with Appendix A to this part, given to a transferee or lessee which is applied against the fair market value of the surplus Federal real property at the time of the transfer or lease of such property in exchange for the proposed educational use of the property by the transferee or lessee.

Related personal property means any personal property—

(1) That is located on and is an integral part of, or incidental to the operation of, the surplus Federal real property; or

(2) That is determined by the Administrator to be otherwise related to the surplus Federal real property.

Surplus Federal real property means the property assigned or suitable for assignment to the Secretary by the Administrator for disposal under the Act.

Transfer means to sell and convey title to surplus Federal real property for educational purposes as described in this part.

Transferee means that entity which has purchased and acquired title to the surplus Federal real property for educational purposes pursuant to section 203(k) of the Act.

(Authority: 40 U.S.C. 472 and 20 U.S.C. 3401 *et seq.*)

§ 12.3 What other regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR Parts 100, 104, and 106.
(b) 41 CFR Part 101–47.
(c) 34 CFR Part 85.

(Authority: 40 U.S.C. 484(k); 42 U.S.C. 2000d–1 *et seq.*; 29 U.S.C. 794 *et seq.*; 20 U.S.C. 1681 *et seq.*; Executive Order 12549; and 20 U.S.C. 3474)

Subpart B—Distribution of Surplus Federal Real Property

§ 12.4 How does the Secretary provide notice of availability of surplus Federal real property?

The Secretary notifies potential applicants of the availability of surplus Federal real property for transfer for educational uses in accordance with 41 CFR 101–47.308–4.

(Authority: 40 U.S.C. 484(k)(1))

§ 12.5 Who may apply for surplus Federal real property?

The following entities may apply for surplus Federal real property:

(a) A State.
(b) A political subdivision or instrumentality of a State.
(c) A tax-supported institution.
(d) A nonprofit institution.
(e) Any combination of these entities.

(Authority: 40 U.S.C. 484(k)(1)(A))

§ 12.6 What must an application for surplus Federal real property contain?

An application for surplus Federal real property must—

(a) Contain a program and plan of use;

(b) Contain a certification from the applicant that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations;

(c) Demonstrate that the proposed program and plan of use of the surplus

Federal real property is for a purpose that the applicant is authorized to carry out;

(d) Demonstrate that the applicant is able, willing, and authorized to assume immediate custody, use, care, and maintenance of the surplus Federal real property;

(e) Demonstrate that the applicant is able, willing, and authorized to pay the administrative expenses incident to the transfer or lease;

(f) Demonstrate that the applicant has the necessary funds, or the ability to obtain those funds immediately upon transfer or lease, to carry out the proposed program and plan of use for the surplus Federal real property;

(g) Demonstrate that the applicant has an immediate need and ability to use all of the surplus Federal real property for which it is applying;

(h) Demonstrate that the surplus Federal real property is needed for educational purposes at the time of application and that it is so needed for the duration of the period of restriction;

(i) Demonstrate that the surplus Federal real property is suitable or adaptable to the proposed program and plan of use; and

(j) Provide information requested by the Secretary in the notice of availability, including information of the effect of the proposed program and plan of use on the environment.

(Authority: 40 U.S.C. 484(k))

(Approved by the Office of Management and Budget under control number 1880–0524)

§ 12.7 How is surplus Federal real property disposed of when there is more than one applicant?

(a) If there is more than one applicant for the same surplus Federal real property, the Secretary transfers or leases the property to the applicant whose proposed program and plan of use the Secretary determines provides the greatest public benefit, using the criteria contained in appendix A to this part that broadly address the weight given to each type of entity applying and its proposed program and plan of use. (See example in § 12.10(d)).

(b) If, after applying the criteria described in paragraph (a) of this section, two or more applicants are rated equally, the Secretary transfers or leases the property to one of the applicants after—

(1) Determining the need for each applicant's proposed educational use at the site of the surplus Federal real property;

(2) Considering the quality of each applicant's proposed program and plan of use; and

(3) Considering each applicant's ability to carry out its proposed program and plan of use.

(c) If the Secretary determines that the surplus Federal real property is capable of serving more than one applicant, the Secretary may apportion it to fit the needs of as many applicants as is practicable.

(d)(1) The Secretary generally transfers surplus Federal real property to a selected applicant that meets the requirements of this part.

(2) Alternatively, the Secretary may lease surplus Federal real property to a selected applicant that meets the requirements of this part if the Secretary determines that a lease will promote the most effective use of the property consistent with the purposes of this part or if having a lease is otherwise in the best interest of the United States, as determined by the Secretary.

(Authority: 40 U.S.C. 484(k))

§ 12.8 What transfer or lease instruments does the Secretary use?

(a) The Secretary transfers or leases surplus Federal real property using transfer or lease instruments that the Secretary prescribes.

(b) The transfer or lease instrument contains the applicable terms and conditions described in this part and any other terms and conditions the Secretary or Administrator determines are appropriate or necessary.

(Authority: 40 U.S.C. 484(c))

§ 12.9 What warranties does the Secretary give?

The Secretary transfers or leases surplus Federal real property on an "as is, where is," basis without warranty of any kind.

(Authority: 40 U.S.C. 484(k)(1))

§ 12.10 How is a Public Benefit Allowance (PBA) calculated?

(a) The Secretary calculates a PBA in accordance with the provisions of appendix A to this part taking into account the nature of the applicant, and the need for, impact of, and type of program and plan of use for the property, as described in that appendix.

(b) The following are illustrative examples of how a PBA would be calculated and applied under Appendix A:

(1) Entity A is a specialized school that has had a building destroyed by fire, and that has existing facilities determined by the Secretary to be between 26 and 50% inadequate. It is proposing to use the surplus Federal real property to add a new physical education program. Entity A would receive a basic PBA of 70%, a 10% hardship organization allowance, a 20% allowance for inadequacy of existing school plant facilities, and a 10% utilization allowance for introduction of new instructional programs. Entity A would have a total PBA of 110%. If Entity A is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA exceeds 100%.

(2) Entity B proposes to use the surplus Federal real property for nature walks. Because this qualifies as an outdoor educational program, Entity B would receive a basic PBA of 40%. If Entity B is awarded the surplus Federal real property, it would be required to pay 60% of the fair market value of the surplus Federal real property in cash at the time of the transfer.

(3) Entity C is an accredited university, has an ROTC unit, and proposes to use the surplus Federal real property for a school health clinic and for special education of the physically handicapped. Entity C would receive a basic PBA of 50% (as a college or university), a 20% accreditation organization allowance (accredited college or university), a 10% public service training organization allowance (ROTC), a 10% student health and welfare utilization allowance (school health clinic), and a 10% service to the handicapped utilization allowance (education of the physically handicapped). Entity C would have a total PBA of 100%. If Entity C is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA is 100%.

(4) Entities A, B, and C all submit applications for the same surplus Federal real property. Unless the Secretary decides to apportion it, the Secretary transfers or leases the surplus Federal real property to Entity A, since its proposed program and plan of use has the highest total PBA.

(Authority: 40 U.S.C. 484(k)(1)(c))

Subpart C—Conditions Applicable to Transfers or Leases

§ 12.11 What statutory provisions and Executive Orders apply to transfers of surplus Federal real property?

The Secretary directs the transferee or lessee to comply with applicable provisions of the following statutes and Executive Orders prior to, or immediately upon, transfer or lease, as applicable:

(a) National Environmental Policy Act of 1969, 42 U.S.C. 4332.

(b) National Historic Preservation Act of 1966, 16 U.S.C. 470.

(c) National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*

(d) Floodplain Management, Exec. Order No. 11988, 42 FR 26951 (May 25, 1977).

(e) Protection of Wetlands, Exec. Order No. 11990, 42 FR 26961 (May 25, 1977).

(f) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d)(1) *et seq.*

(g) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*

(h) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 *et seq.*

(i) Age Discrimination Act of 1975, 42 U.S.C. 1601 *et seq.*

(j) Any other applicable Federal or State laws and Executive Orders.

(Authority: 40 U.S.C. 484(k))

(Approved by the Office of Management and Budget under control number 1880–0524)

§ 12.12 What are the terms and conditions of transfers or leases of surplus Federal real property?

(a) *General terms and conditions for transfers and leases.* The following general terms and conditions apply to transfers and leases of surplus Federal real property under this part:

(1) For the period provided in the transfer or lease instrument, the transferee or lessee shall use all of the surplus Federal real property it receives solely and continuously for its approved program and plan of use, in accordance with the Act and these regulations, except that—

(i) The transferee or lessee has twelve (12) months from the date of transfer to place this surplus Federal real property into use, if the Secretary did not, at the time of transfer, approve in writing construction of major new facilities or major renovation of the property;

(ii) The transferee or lessee has thirty-six (36) months from the date of transfer to place the surplus Federal real property into use, if the transferee or lessee proposes construction of major new facilities or major renovation of the property and the Secretary approves it in writing at the time of transfer; and

(iii) The Secretary may permit use of the surplus Federal real property at any time during the period of restriction by an entity other than the transferee or lessee in accordance with § 12.13.

(2) The transferee or lessee may not modify its approved program and plan of use without the prior written consent of the Secretary.

(3) The transferee or lessee may not sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of all or a portion of the surplus Federal real property or any interest therein without the prior written consent of the Secretary.

(4) A transferee or lessee shall pay all administrative costs incidental to the transfer or lease including, but not limited to—

(i) Transfer taxes;

(ii) Surveys;

(iii) Appraisals;

(iv) Inventory costs;

(v) Legal fees;

(vi) Title search;

(vii) Certificate or abstract expenses;

(viii) Decontamination costs;

(ix) Moving costs;

(x) Recordation expenses;

(xi) Other closing costs; and

(xii) Service charges, if any, provided for by an agreement between the Secretary and the applicable State agency for Federal Property Assistance.

(5) The transferee or lessee shall protect the residual financial interest of the United States in the surplus Federal real property by insurance or such other means as the Secretary directs.

(6) The transferee or lessee shall file with the Secretary reports on its maintenance and use of the surplus Federal real property and any other reports required by the Secretary in accordance with the transfer or lease instrument.

(7) Any other term or condition that the Secretary determines appropriate or necessary.

(b) *Additional terms and conditions for on-site transfers.* The terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period not to exceed thirty (30) years.

(c) *Additional terms and conditions for off-site transfers.* (1) The terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period equivalent to the estimated economic life of the property conveyed for a transfer of off-site surplus Federal real property.

(2) In addition to the terms and conditions contained in paragraph (c) of this section, the Secretary may also require the transferee of off-site surplus Federal real property—

(i) To post performance bonds;

(ii) To post performance guarantee deposits; or

(iii) To give such other assurances as may be required by the Secretary or the holding agency to ensure adequate site clearance.

(d) *Additional terms and conditions for leases.* In addition to the terms and conditions contained in paragraph (a) of this section, the Secretary requires, for leases of surplus Federal real property, that all terms and conditions apply to the initial lease agreement, and any renewal periods, unless specifically excluded in writing by the Secretary.

(Authority: 40 U.S.C. 484(k)(1))

(Approved by the Office of Management and Budget under control number 1880–0524)

§ 12.13 When is use of the transferred surplus Federal real property by entities other than the transferee or lessee permissible?

(a) *By eligible entities.* A transferee or lessee may permit the use of all or a portion of the surplus Federal real property by another eligible entity as described in § 12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) The Secretary determines that the proposed use would not substantially limit the program and plan of use by the transferee or lessee and that the use will not unduly burden the Department;

(2) The Secretary's written consent is obtained by the transferee or lessee in advance; and

(3) The Secretary approves the use instrument in advance and in writing.

(b) *By ineligible entities.* A transferee or lessee may permit the use of a portion of the surplus Federal real property by an ineligible entity, one not described in § 12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) In accordance with paragraph (a) of this section, the Secretary makes the required determination and approves both the use and the use instrument;

(2) The use is confined to a portion of the surplus Federal real property;

(3) The use does not interfere with the approved program and plan of use for which the surplus Federal real property was conveyed; and

(4) Any rental fees or other compensation for use are either remitted directly to the Secretary or are applied to purposes expressly approved in writing in advance by the Secretary.

(Authority: 40 U.S.C. 484(k)(4))

Subpart D—Enforcement

§ 12.14 What are the sanctions for noncompliance with a term or condition of a transfer or lease of surplus Federal real property?

(a) *General sanctions for noncompliance.* The Secretary imposes any or all of the following sanctions, as applicable, to all transfers or leases of surplus Federal real property:

(1) If all or a portion of, or any interest in, the transferred or leased surplus Federal real property is not used or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of the Secretary, the Secretary may require that—

(i) All revenues and the reasonable value of other benefits received by the transferee or lessee directly or indirectly from that use, as determined by the Secretary, be held in trust by the transferee or lessee for the United States subject to the direction and control of the Secretary;

(ii) Title or possession to the transferred or leased surplus Federal real property and the right to immediate possession revert to the United States;

(iii) The surplus Federal real property be transferred or leased to another eligible entity as the Secretary directs;

(iv) The transferee or lessee abrogate the conditions and restrictions in the transfer or lease instrument in accordance with the provisions of § 12.15;

(v) The transferee or lessee place the surplus Federal real property into immediate use for an approved purpose and extend the period of restriction in the transfer or lease instrument for a term equivalent to the period during which the property was not fully and solely used for an approved use; or

(vi) The transferee or lessee comply with any combination of the sanctions described in paragraph (a)(1) or (a)(3) of this section.

(2) If title or possession reverts to the United States for noncompliance or is voluntarily reconveyed, the Secretary may require the transferee or lessee—

(i) To reimburse the United States for the decrease in value of the transferred or leased surplus Federal real property not due to—

(A) Reasonable wear and tear;

(B) Acts of God; or

(C) Reasonable alterations made by the transferee or lessee to adapt the surplus Federal real property to the approved program and plan of use for which it was transferred or leased;

(ii) To reimburse the United States for any costs incurred in reverting title or possession;

(iii) To forfeit any cash payments made by the transferee or lessee against the purchase or lease price of surplus Federal real property transferred;

(iv) To take any other action directed by the Secretary; or

(v) To comply with any combination of the provisions of paragraph (a)(3) of this section.

(3) If the transferee or lessee does not put the surplus Federal real property into use within the applicable time limitation in § 12.12(a), the Secretary may require the transferee or lessee to make cash payments to the Secretary equivalent to the current fair market rental value of the surplus Federal real property for each month during which the program and plan of use has not been implemented.

(Authority: 40 U.S.C. 484(k)(4))

(4) If the Secretary determines that a lessee of a transferee or a sublessee of a lessee is not complying with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, the Secretary may require termination of the lease.

(Authority: 40 U.S.C. 484(k)(4)(A))

(b) *Additional sanction for noncompliance with off-site transfer.* In addition to the sanctions in paragraph (a) of this section, if the Secretary determines that a transferee is not complying with a term or condition of a transfer of off-site surplus Federal real property, the Secretary may require that the unearned PBA become immediately due and payable in cash to the United States.

(Authority: 40 U.S.C. 484(k)(4)(A))

Subpart E—Abrogation

§ 12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

(a) The Secretary may, in the Secretary's sole discretion, abrogate the conditions and restrictions in the transfer or lease instrument if—

(1) The transferee or lessee submits to the Secretary a written request that the Secretary abrogate the conditions and restrictions in the conveyance instrument as to all or any portion of the surplus Federal real property;

(2) The Secretary determines that the proposed abrogation is in the best interests of the United States;

(3) The Secretary determines the terms and conditions under which the Secretary will consent to the proposed abrogation; and

(4) The Secretary transmits the abrogation to the Administrator and there is no disapproval by the Administrator within thirty (30) days after notice to the Administrator.

(b) The Secretary abrogates the conditions and restrictions in the transfer or lease instrument upon a cash payment to the Secretary based on the formula contained in the transfer or lease instrument and any other terms and conditions the Secretary deems appropriate to protect the interest of the United States.

(Authority: 40 U.S.C. 484(k)(4)(A)(iii))

APPENDIX A TO PART 12.—PUBLIC BENEFIT ALLOWANCE FOR TRANSFER OF SURPLUS FEDERAL REAL PROPERTY FOR EDUCATIONAL PURPOSES [1]

Classification	Percent allowed												
	Basic public benefit allowance	Organization allowances							Utilization allowances				Maximum public benefit allowance [4]
		Accreditation	Federal impact	Public service training	Hardship	Inadequacy of existing school plant facilities			Introduction of new instructional programs	Student health and welfare	Research	Service to handicapped	
						10–25%	26–50%	51–100%					
Elementary or high schools	70	.....	10	10	10	10	20	30	10	10	10	10	100
Colleges or Universities	50	20	.....	10	10	10	20	30	10	10	10	10	100
Specialized schools	70	.....	.....	10	10	10	20	30	10	10	10	10	100
Public libraries or educational museums	[2] 100	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	[2] 100
School outdoor education	40	.....	.....	.....	.....	.....	.....	.....	10	[3] 10	10	.....	70
Central administrative and/or service centers	80	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	80
Non-profit educational research organizations	50	20	.....	10	.....	.....	.....	.....	10	10	.....	10	100

[1] This Appendix applies to transfers of both on-site and off-site surplus property.
[2] Applicable when this is the primary use to be made of the property. The public benefit allowance for the overall program is applicable when such facilities are conveyed as a minor component of other facilities.
[3] This 10% may include an approvable recreation program which will be accessible to the public and entirely compatible with, but subordinate to, the educational program.
[4] This column establishes the maximum discount from the fair market value for payment due from the transferee at the time of the transfer. This column does not apply for purposes of ranking applicants to determine to which applicant the property will be transferred. Competitive rankings are based on the absolute total of public benefit allowance points and are not limited to the 100% ceiling.

Description of Terms Used in This Appendix

"Elementary or High School" means an elementary school (including a kindergarten), high school, junior high school, junior-senior high school or elementary or secondary school system, that provides elementary or secondary education as determined under State law. However, it does not include a nursery school even though it may operate as part of a school system.

"College or University" means a non-profit or public university or college, including a junior college, that provides postsecondary education.

"Specialized School" means a vocational school, area trade school, school for the blind, or similar school.

"Public Library" means a public library or public library service system, not a school library or library operated by non-profit, private organizations or institutions that may be open to the general public. School libraries receive the public benefit allowance in the appropriate school classification.

"Educational Museum" means a museum that conducts courses on a continuing, not *ad hoc*, basis for students who receive credits from accredited postsecondary education institutions or school systems.

"School Outdoor Education" means a separate facility for outdoor education as distinguished from components of a basic school. Components of a school such as playgrounds and athletic fields receive the basic allowance applicable for that type of school. The outdoor education must be located reasonably near the school system and may be open to and used by the general public, but only if the educational program for which the property is conveyed is given priority of use. This category does not include components of the school such as playgrounds and athletic fields, that are utilized during the normal school year, and are available to all students.

"Central Administrative and/or Service Center" means administrative office space, equipment storage areas, and similar facilities.

Description of Allowances

"Basic Public Benefit Allowance" means an allowance that is earned by an applicant that satisfies the requirements of § 12.10 of this part.

Organization Allowance

"Accreditation" means an allowance that is earned by any postsecondary educational institution, including a vocational or trade school, that is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602.

"Federal Impact" means an allowance that is earned by any local educational agency (LEA) qualifying for Federal financial assistance as the result of the impact of certain Federal activities upon a community, such as the following under Public Law 81–874 and Public Law 81–815: to any LEA charged by law with responsibility for education of children who reside on, or whose parents are employed on, Federal property, or both; to any LEA to which the Federal Government has caused a substantial and continuing financial burden as the result of the acquisition of a certain amount of Federal property since 1938; or to any LEA that urgently needs minimum school facilities due to a substantial increase in school membership as the result of new or increased Federal activities.

"Public Services Training" means an allowance that is earned if the applicant has cadet or ROTC units or other personnel training contracts for the Federal or State governments. This is given to a school system only if the particular school receiving the property furnishes that training.

"Hardship" means an allowance earned by an applicant that has suffered a significant facility loss because of fire, storm, flood, other disaster, or condemnation. This allowance is also earned if unusual conditions exist such as isolation or economic factors that require special consideration.

"Inadequacies of Existing Facilities" means an allowance that is earned on a percentage basis depending on the degree of inadequacy considering both public and nonpublic facilities. Overall plant requirements are determined based on the relationship between the maximum enrollment accommodated in the present facilities, excluding double and night sessions and the anticipated enrollment if the facilities are transferred. Inadequacies may be computed for a component school unit such as a school farm, athletic field, facility for home economics, round-out school site, cafeteria, auditorium, teacherages, faculty housing, etc., only if the component is required to meet State standards. In that event, the State Department of Education will be required to provide a certification of the need. Component school unit inadequacies may only be related to a particular school and not to the entire school system.

Utilization Allowances

"Introduction of New Instructional Programs" means an allowance that is earned if the proposed use of the property indicates that new programs will be added at a particular school. Examples of these new programs include those for vocational education, physical education, libraries, and similar programs.

"Student Health and Welfare" means an allowance that is earned if the proposed program and plan of use of the property provides for cafeteria, clinic, infirmary, bus loading shelters, or other uses providing for the well-being and health of students and eliminating safety and health hazards.

"Research" means an allowance that is earned if the proposed use of the property will be predominantly for research by faculty or graduate students under school auspices, or other primary educational research.

"Service to Handicapped" means an allowance that is earned if the proposed program and plan of use for the property will be for special education for the physically or mentally handicapped.

[FR Doc. 92-30467 Filed 12-17-92; 8:45 am]

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federal register

Friday
December 18, 1992

Part IV

Department of Transportation

Coast Guard

33 CFR Parts 155 and 157
46 CFR Part 30, et al.
Double Hull Standards for Vessels Carrying Oil in Bulk; Reopening of Comment Period; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 155 and 157; 46 CFR Parts 30, 32, 70, 90, and 172

[CGD 90-051]

RIN 2115-AD61

Double Hull Standards for Vessels Carrying Oil in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Interim Final Rule; reopening of comment period.

SUMMARY: The Coast Guard is reopening the public comment period for this rulemaking which was published on August 12, 1992 (57 FR 36222). This action is being taken to provide the public the opportunity to further comment on: (1) Existing double hull vessel design requirements; and (2) double hull requirements for non-traditional tank vessels carrying oil in bulk.

DATES: Comments must be received on or before February 26, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, (G-LRA-2/3406) [CGD 90-051]; U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Gauvin, Project Manager, Merchant Vessel Inspection and Documentation Division (G-MVI-2), telephone (202) 267-1181.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should include their name, address, identify this rulemaking (CGD 90-051), the specific section of the proposal or related documents to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments currently in the public docket, including comments received after the initial comment period was closed, and all additional comments received during this comment period. The proposal may be changed in view of the comments.

The Coast Guard plans no public hearing. However, persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES.**" If it is determined that the opportunity to make oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Discussion

Section 4115 of the Oil Pollution Act of 1990 (Pub. L. 101-380) (OPA 90) added section 3703a to title 46 U.S. Code. Section 3703a(a) requires a double hull to be fitted on a vessel carrying oil in bulk as cargo or cargo residue. A vessel that is constructed or undergoes a major conversion under a contract placed on or after June 30, 1990, must have a double hull fitted at the time of construction or major conversion. An existing vessel that is constructed or that undergoes a major conversion under an earlier contract must be fitted with a double hull in accordance with a timetable in 46 U.S.C. 3703a(c)(3), which commences in 1995.

Section 3703a does not provide technical standards for a double hull. The Interim Final Rule (IFR) provided the shipping and shipbuilding industries with standards in order to meet the double hull requirement.

On September 21, 1990, the Coast Guard issued Navigation and Vessel Inspection Circular (NVIC) No. 2-90. This NVIC provides policy guidance on double hull construction for a vessel undergoing construction or major conversion under a contract awarded prior to the effective date of this rule. A vessel which is built to plans that have been approved in accordance with NVIC 2-90 under a contract awarded before the effective date of this rule, September 11, 1992, will satisfy the double hull requirements in the IFR. NVIC 2-90 may not be used for a vessel which undergoes construction or major conversion under a contract awarded on or after the effective date of the IFR, September 11, 1992.

On December 5, 1990, the Coast Guard published a notice of proposed rulemaking (55 FR 50192) to implement the double hull requirements of OPA 90. This proposal included standards to define the double hulls that OPA 90 requires to be fitted on all tank vessels built or converted under contracts awarded on or after June 30, 1990. OPA 90 requires tank vessels built or converted under earlier contracts to be retrofitted with double hulls according to a timetable that begins in 1995 and ends in 2015. The notice of proposed rulemaking requested comments from the public for a period which closed on April 1, 1991.

On September 6, 1991, the Coast Guard reopened the comment period for the notice of proposed rulemaking (56 FR 44051) until October 7, 1991, due to two subsequent events which had major impact upon the Coast Guard's proposal for rulemaking. These were the publishing of the National Academy of Science's study, "Tanker Spills: Prevention by Design," on February 25, 1991, and the 31st Session of the International Maritime Organization's (IMO) Marine Environment Protection Committee's (MEPC) approval of a draft Regulation 13F (MEPC 31/MP.11, Annex 2) as an amendment to Annex I of MARPOL 73/78 on July 5, 1991. The draft was then circulated to IMO's member states for consideration. Regulation 13F proposed the international standards for new construction or major conversion of vessels to double hull design. Also approved at MEPC 31, was a draft of Regulation 13G (MEPC 31/WP.11, Annex 3, paragraph 2), which proposed requirements for double hull construction or equivalence for existing vessels.

On March 6, 1992, the MEPC adopted Regulations 13F and 13G to Annex I of MARPOL 73/78 at its 32nd Session. The United States reserved its position during the adoption of Regulations 13F and 13G, due to differences with OPA 90 regarding the applicability of double hull requirements to certain categories of vessels and the allowance of the mid-deck concept as an alternative to the double hull. To assist the public in understanding the differences between the adopted international rules and the IFR, the adopted international regulations were reprinted as an appendix in the preamble of the IFR.

On April 2, 1992, the Coast Guard issued NVIC 4-92. This NVIC provides policy guidance on intact and damage stability for the construction of new tank vessels.

On August 12, 1992, the Coast Guard published the IFR on double hull standards for vessels carrying oil in bulk. This rule provided the marine industry with standards, not provided in OPA 90, for new vessels to meet the double hull requirements. The effective date of the IFR was September 11, 1992. The comment period for the IFR closed on October 13, 1992.

As a result of comments received between August 12 and October 13, the Coast Guard is reopening the comment period to allow the public to further comment on the effect double hull standards have on existing double hulled vessels, as discussed in paragraph 15 of the IFR (57 FR 36226). Paragraph 15 states that the Coast Guard concurred with comments that existing double hulled tank vessels be permitted to continue operating even if such vessels do not meet the dimensions adopted in the IFR for new tank vessels. Therefore, the Coast Guard incorporated § 157.10d(c)(1)(iii), (c)(2)(iii), and (d)(3) providing these existing vessels with double hull dimensions consistent with their existing construction. These are double hulled vessels and barges that were built before June 30, 1990, that carry oil in bulk under existing industry design standards. The Coast Guard is specifically interested in knowing how many existing double hull vessels will be effected by the vessel design standards in § 157.10d(c)(1)(iii), (c)(2)(iii), and (d)(3).

As a note, the Coast Guard wishes to again clarify that the IFR also applies to dry or break bulk cargo, or passenger vessels, which carry oil as a secondary cargo. Subject to the exemptions in 46 U.S.C. 3702, the Oil Pollution Act of 1990 applies double hull requirements to a tank vessel, as defined in 46 U.S.C. 2101(39). Section 2101(39) provides that a tank vessel is a vessel constructed or adapted to carry, or that carries, oil or hazardous materials in bulk as cargo or cargo residue, and is a vessel of the United States; operates on the navigable waters of the United States; or transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States. Section 2101(39) includes a vessel that carries any quantity of oil in bulk as cargo, including tank barge, a tanker as defined in 47 U.S.C. 2101(38), and a vessel certified as a cargo or passenger vessel that carries limited quantities of oil in bulk.

On November 4, 1992, the Coast Guard Authorization Act of 1992, was signed into law as title V of Public Law 102–587. Section 5209 of the Coast Guard Authorization Act, titled "Tank Vessel Definition Clarification," referred to offshore supply vessel, fish tender vessel, fishing vessel and tank vessel, as defined in 46 U.S.C. 2101 and provides that offshore supply vessels are not included within the definition of "tank vessels." Additionally, fishing or fish tender vessels of not more than 750 gross tons that make transfers without charge to another vessel owned by the same person are also excluded from the definition of "tank vessels."

Dated: November 29, 1992.

A. E. Henn,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–30657 Filed 12–17–92; 8:45 am]

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federal register

Friday
December 18, 1992

Part V

Department of Education

34 CFR Part 206

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

DEPARTMENT OF EDUCATION

34 CFR Part 206

RIN 1810-AA68

Special Educational Programs for Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP). These regulations implement statutory changes enacted in the Higher Education Amendments of 1992 and make other technical revisions to the existing regulations. These programs support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. Specifically, National Education Goal 5 calls for Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. These programs advance this goal by helping migrant youth, through their participation in HEP and CAMP projects, to obtain the skills and competencies needed for their success in and beyond the secondary school level.

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

FOR FURTHER INFORMATION CONTACT: Lorraine Wise, Office of Migrant Education, Department of Education, 400 Maryland Avenue, SW, room 2149, Mail Stop 6135, Washington, DC 20202. Telephone: (202) 401-0744. Deaf and hearing impaired individuals may call (202) 401-1985 for TDD services.

SUPPLEMENTARY INFORMATION: These regulations implement changes to HEP and CAMP required by section 405 of the Higher Education Amendments of 1992 (Pub. L. 102-325), enacted July 23, 1992, and make other technical revisions to the existing regulations. There are no substantive changes made in these final regulations other than those required by the statute. Significant statutory changes include the following:

Expansion of Program Eligibility

The minimum age for participation in HEP has been lowered from 17 to 16 years of age (§ 206.3(b)). Eligible participants in both the HEP and CAMP now include persons who have participated (in the case of HEP, within the preceding two years) or are eligible to participate in programs funded under 34 CFR part 201 (Chapter 1-Migrant Education Program) or 20 CFR part 633 (Employment and Training Administration, Department of Labor—Migrant and Seasonal Farmworker Programs (§ 206.3(a)). Definitions of terms that concern eligibility on the basis of these two programs are incorporated into these regulations in § 206.5(d).

Expansion of Program Services

Grantees under CAMP now may not use more than 10 percent of their funding for follow-up services to participants who have completed their first year of college (§ 206.11).

Increase in the Project Period for Awards

The maximum project period for HEP and CAMP awards has been increased from three to five years (§ 206.20(b)).

Other Technical Revisions

These regulations also make other technical revisions to the existing regulations. They clarify, as does the statute, that only a migrant or seasonal farmworker or a farmworker's child can qualify for eligibility (§ 206.3(a)). In addition, 34 CFR parts 81, 82, 85, and 86 of the Education Department General Administrative Regulations (EDGAR), which apply on their own terms to this program, have been added as applicable regulations. Furthermore, 34 CFR part 78 has been deleted as no longer applicable (§ 206.4).

Waiver of Proposed Rulemaking

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 regulations incorporate only statutory changes and other technical revisions and public comment would have no effect on these changes. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

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.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

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

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

Assessment of Educational Impact

The Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 206

Colleges and universities, Education, Education of the disadvantaged, Grant programs—education, Migrant labor.

(Catalog of Federal Domestic Assistance Numbers: 84.141 Migrant Education—High School Equivalency Program; and 84.149 Migrant Education—College Assistance Migrant Program)

Dated: November 30, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 206 of title 34 of the Code of Federal Regulations as follows:

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY AND COLLEGE ASSISTANCE MIGRANT PROGRAM

1. The authority citation for part 206 is revised to read as follows:

Authority: 20 U.S.C. 1070d-2, unless otherwise noted.

§ 206.1 [Amended]

2. In § 206.1, paragraphs (a) and (b) are amended by removing "students—who are engaged, or whose families are engaged, in migrant and other seasonal farmwork—" and adding, in its place, "persons who are eligible under § 206.3".

3. Section 206.3 is amended by revising paragraphs (a), (b), introductory text, and (c), to read as follows:

§ 206.3 Who is eligible to participate in a project?

(a) *General.* To be eligible to participate in a HEP or a CAMP project—

(1) A person, or his or her parent, must have spent a minimum of 75 days during the past 24 months as a migrant or seasonal farmworker; or

(2) The person must have participated (with respect to HEP within the last 24 months), or be eligible to participate, in programs under 34 CFR part 201 (Chapter 1–Migrant Education Program) or 20 CFR part 633 (Employment and Training Administration, Department of Labor—Migrant and Seasonal Farmworker Programs).

(b) *Special HEP qualifications.* To be eligible to participate in a HEP project, a person also must—

* * * * *

(3) Be 16 years of age or over, or beyond the age of compulsory school attendance in the State in which he or she resides; and

* * * * *

(c) *Special CAMP qualifications.* To be eligible to participate in a CAMP project, a person also must—

* * * * *

4. Section 206.4 is amended by revising paragraph (a) to read as follows:

§ 206.4 What regulations apply to these programs?

* * * * *

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

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

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

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

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

(5) 34 CFR Part 81 (General Educational Provisions Act—Enforcement).

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

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

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

(b) The regulations in this Part 206.

* * * * *

5. Section 206.5 is amended by adding paragraph (d) to read as follows:

§ 206.5 What definitions apply to these programs?

* * * * *

(d) *Other definitions.* For purposes of determining program eligibility under § 206.3(a)(2), the definitions in 34 CFR 201.3 (Chapter 1—Migrant Education Program) and 20 CFR 633.104 (Employment and Training Administration, Department of Labor—Migrant and Seasonal Farmworker Programs) apply.

6. Section 206.10 is amended by revising paragraphs (b)(1)(i) and (b)(2)(i) to read as follows:

§ 206.10 What types of services may be provided?

* * * * *

(b) * * *

(1) * * *

(i) Recruitment services to reach persons who are eligible under § 206.3 (a) and (b).

* * * * *

(2) * * *

(i) Outreach and recruitment services to reach persons who are eligible under § 206.3 (a) and (c).

* * * * *

7. A new § 206.11 is added to subpart B to read as follows:

§ 206.11 What types of CAMP services must be provided?

(a) In addition to the services provided in § 206.10(b)(2), CAMP projects must provide follow-up services for project participants after they have completed their first year of college.

(b) Follow-up services may include—

(1) Monitoring and reporting the academic progress of students who participated in the project during their first year of college and their subsequent years in college; and

(2) Referring these students to on- or off-campus providers of counseling services, academic assistance, or financial aid.

(c) Grantees may not use more than 10 percent of funds awarded to them for follow-up services.

(Authority: 20 U.S.C. 1070d-2(c))

§ 206.20 [Amended]

8. Section 206.20(b)(1) is amended by removing the word "three", and adding, in its place, the word "five".

[FR Doc. 92–30588 Filed 12–17–92; 8:45 am]

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federal register

Friday
December 18, 1992

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840 and 842
Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs; Abandoned Sites; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840 and 842

RIN 1029-AB60

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs; Abandoned Sites

AGENCY: Office and Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior proposes to amend its regulations governing the inspection of surface coal mining and reclamation operations to change the minimum inspection frequency for minesites defined as "abandoned sites" under the existing regulations. An abandoned site is an incompletely reclaimed surface coal mining and reclamation operation where mining and reclamation activities have permanently ceased. In most instances the operators of these sites have filed for bankruptcy or can not be located and either will not or can not comply with corrective measures ordered in State or Federal enforcement actions which mine inspectors have issued to compel abatement of violations of environmental performance standards or to compel completion of reclamation obligations. These proposed revisions would enable regulatory authorities to eliminate a significant number of ineffective inspections which waste inspection resources and thus, would allow the regulatory authorities to redirect those resources to operations where inspection and enforcement would achieve intended results.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on January 19, 1993.

Public Hearings: Upon request, OSM will hold a public hearing on the proposed rule in Washington, DC on January 19, 1993. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5 p.m. on January 19, 1993. Individuals wishing to attend, but not testify at the hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** beforehand to verify that the hearing will be held.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol St. NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 1951 Constitution Avenue NW., Washington, DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC. The addresses for any hearings scheduled in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Daniel Stocker, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240: Telephone: 202-208-2550 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see **ADDRESSES**). Comments received after the close of the comment period or delivered to addresses other than those listed above (see **DATES**) may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The time, date, and address scheduled for the hearing in Washington, DC are (see **DATES** and **ADDRESSES**). The times, dates, and addresses for any hearings at other locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at those locations.

Any person interested in attending or participating at a hearing at a particular location should inform Mr. Stocker (see **FOR FURTHER INFORMATION CONTACT**) either orally or in writing of the desired hearing location by 5 p.m. Eastern time January 19, 1993. If no one has contacted Mr. Stocker to express an interest in participating in a hearing a given location by that date, no hearing will be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results will be included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing provide the transcriber a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit an advance copy of their testimony to OSM at the address previously specified for submission of written comments (see **ADDRESSES**).

II. Background

Section 517(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act) states that the regulatory authority shall inspect on an irregular basis averaging not less than one partial inspection per month and one complete inspection per quarter each surface coal mining and reclamation operation covered by a permit. To implement this requirement, OSM first promulgated rules at 30 CFR 840.11 for State regulatory authorities and at 30 CFR 842.11 for OSM where it is the regulatory authority in a State. 44 FR 15455 (March 13, 1979). These rules required regulatory authorities to inspect each surface coal mining and reclamation operation on an average of not less than one partial inspection per month and not less than one complete inspection per calendar quarter.

These rules were revised on August 16, 1982. 47 FR 35620. Among other things, the 1982 rules defined "inactive" operations as a distinct category of surface coal mining and reclamation operations and reduced the partial inspection frequency requirement for those operations to "as necessary to ensure effective enforcement" of the regulatory program. The rules were again revised in 1988. (53 FR 24872, June 30, 1988). This time the rules defined an "abandoned site" as a distinct category of surface coal mining and reclamation operations and enabled regulatory authorities to reduce the inspection frequency at these sites and to refrain from issuing additional

enforcement actions at abandoned sites under certain conditions. The definition of "abandoned site" specifies that before a site can be considered abandoned it must first meet certain criteria which ensure that the regulatory authority has or is in the process of taking all enforcement action available to it under the applicable regulatory program to compel abatement of violations and completion of reclamation. Sites meeting the definition could then, instead of twelve times per year, be inspected "as necessary to monitor for changes of environmental conditions or operational status at the site."

The 1988 final rule was subsequently challenged in Federal District Court. On August 30, 1990, the United States District Court for the District of Columbia issued an order in the case of *National Wildlife Federation, et al.*, v. *Manuel Lujan, Jr., et al.*, 31 Env't Rep. Cas. (BNR) 2034, 2042 (D.D.C. 1990) (*NWF* v. *Lujan*). Although the district court remanded the rule to the Secretary to be withdrawn or revised on the basis that the Secretary's arguments supporting the rule at that time were inconsistent with expressed requirements of the Act, it conceded that the rule was practical, that it comported with common sense, and that it is not wise to spend a lot of time and effort inspecting abandoned sites every month when nothing changes. However, to implement the court's order, OSM suspended those parts of the 1988 rule that related to inspection frequency at abandoned sites. The definition of "abandoned site" at 30 CFR 840.11(g) and 842.11(e) and the provision at 30 CFR 843.22 allowing regulatory authorities to refrain from issuing additional enforcement actions at abandoned sites were unaffected by the court order and remain intact (56 FR 25036, June 3, 1991).

Since the district court's decision does not stand in the way of the Secretary proceeding with an alternative rulemaking on the subject of inspection frequency at abandoned sites, OSM is proposing this rule today which it believes is consistent with both the Act and the district court's opinion in *NWF* v. *Lujan*, which struck down the previous rule. See *NWF* v. *Lujan*, Civ. Action Nos. 89–0136, 88–3345 & 88–2416, U.S. App. Ct. (DC Cir., December 10, 1991), mem. op. at 10. The proposed rule does not apply to operations "covered by [a] permit," and thus is not subject to section 517(c) of SMCRA.

In promulgating the 1988 rule on abandoned sites, OSM concluded then, as it does now, that repeated inspections of abandoned sites at the frequency required under the existing rules are an ineffective expenditure of resources and that fewer inspections would not result in increased harm to the environment or reduce in any way the likelihood of ultimate compliance at abandoned sites. The time inspectors spend at abandoned sites detracts from the time they can spend at other sites working with operators to abate present violations and prevent future violations, thus improving the overall quality and effectiveness of inspection programs under the Act.

Enforcement actions issued as a result of inspections at abandoned sites have historically proven to be ineffective at the inspector level to compel abatement of violations or to achieve reclamation. Moreover, inspectors normally have cited all significant violations prior to a site being considered abandoned under the current definition. The persons responsible for abating these violations typically are financially insolvent or cannot be located. In such instances, even when diligent efforts are made to enforce the Act, no one is available to abate violations or to perform or pay for the needed reclamation. Continuing regular partial and complete inspection of these sites serves no useful purpose and wastes finite inspection resources. To illustrate the extent of this waste, OSM has in the past conducted approximately 2,900 inspections each year on an average of 236 abandoned sites in Tennessee. This effort comprises approximately 32 percent of the inspections in that State; however, few of these inspections resulted in abatement of the violations or completion of reclamation.

OSM experience has shown that environmental conditions at most abandoned sites will not significantly degrade beyond that which has been observed during prior inspections and violations of substantive performance standards do not necessarily deteriorate to imminent danger or harm situations. While these sites do not comply with the Act, many, due to their age or because they were partially reclaimed prior to abandonment, become reasonably well stabilized through natural settlement and natural plant succession. During one period where approximately 6,000 inspections were conducted at abandoned sites in Tennessee, OSM inspectors observed no condition which posed an imminent danger to the public health or safety or an imminent environmental harm to land, air, or water resources.

While the stated goal of section 517 of the Act is to "enforce the requirements of and carry out the purposes of [the] Act," inspecting abandoned sites as frequently as sites covered by a permit does nothing to achieve, but on the contrary frustrates, this goal. Among the mechanisms provided by the Act to achieve the stated goals of section 517(c) are penalties under section 518, performance bonds under section 509 and 519, citizen suits under section 520, and enforcement under section 521. Each of these mechanisms implicitly has as its underlying premise the existence of a person against whom an action can be taken, or of a bond that can provide the funds to abate violations and secure reclamation. If no such person can be found after diligent effort, or the regulatory authority otherwise is taking appropriate action to ensure that abatement occurs, and any permit has been revoked and any bond is being forfeited, issuance of multiple notices of violation and cessation orders generated by the fixed inspection frequency requirement and the subsequent assessment of the uncollectible penalties are not productive tools to "enforce the requirements of and carry out [the] purposes of the Act." Under these circumstances, inspections of abandoned sites performed at a minimum frequency less than that for other sites based on the particular characteristics of the site are a far more reasonable and realistic alternative.

Section 201(c)(2) of the Act, 30 U.S.C. 1211(c)(2), requires the Secretary of the Interior to publish and promulgate such rules and regulations as may be necessary to carry out its purposes and provisions. Since regular partial and complete inspections of abandoned sites are a counterproductive use of limited inspection and enforcement resources, and since fewer inspections of such sites are not likely to result in increased environmental harm or otherwise secure compliance with the Act, this rule is a necessary and reasonable implementation of the purposes and provisions of the Act.

III. Discussion of Proposed Rule

Since the revisions being proposed for State regulatory authorities at 840.11 are identical to those being proposed at 842.11 where OSM is the regulatory authority, they will be combined for ease of discussion.

Section 840.11(g)(4)(i)/842.11(e)(4)(i)

These sections are being revised to require that before a site could be classified as abandoned, the permit must be expired or must be revoked. Under the existing rules, a site may be classified as abandoned if permit revocation proceedings have been initiated and are being diligently pursued. OSM now believes that before

a site should be able to qualify under the definition of "abandoned site," and therefore be subject to a reduction in inspection frequency, the permit covering the surface coal mining and reclamation operation should no longer be in effect. A person who has not or will not respond to enforcement actions issued by the regulatory authority and who can not or will not meet his obligations to abate violations or complete reclamation should not be entitled any opportunity to resume surface coal mining operations under the permit.

Section 840.11(g)(4)(ii)/842.11(e)(ii)

To qualify under the definition of "abandoned site," the existing rules require that the regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, the performance bond. These sections are being revised by adding the phrase "any available" before the phrase "performance bond." This change is minor and is intended to recognize that there are some sites that are or were permitted, but a performance bond was never required or no longer exists. The absence of a performance bond has no bearing on whether a site should be classified as abandoned for inspection purposes.

Sections 840.11(h)(1)/842.11(f)(1)

These proposed sections would establish a minimum inspection frequency for abandoned sites of not less than one complete inspection per calendar year. This will enable regulatory authorities to tailor an appropriate inspection frequency for abandoned sites based on the environmental or public health and safety conditions at each site. It would also take into consideration the diversity in terrain, climate, and other unique physical conditions among the various States which may affect the degree of stability or the potential for adverse impacts at such sites. Under these proposed rules, the inspection frequency for abandoned sites may, depending on the nature of the site, vary from one to twelve or more. After an appropriate frequency is selected, regulatory authorities may increase or decrease that frequency as new information becomes available indicating changes in the characteristics of a site.

While enforcement at the inspector level is no longer effective at abandoned sites, the regulatory authority will be required under the definition of "abandoned site" to pursue additional enforcement steps of permit blocking, alternative enforcement, and bond forfeiture. Generally, alternative enforcement beyond the inspector level is the only potentially viable means to achieve reclamation, even if abandoned sites should deteriorate. Where the regulatory authority is taking all appropriate enforcement actions available to it, nothing more can be done through repeated inspections to reclaim a site or abate violations than is already occurring. Thus, while a fixed inspection frequency like that required for active sites under the existing rules might cause the regulatory authority to be informed of a problem at an abandoned site more quickly, it will not provide a new remedy. Accordingly, OSM believes that the inspection frequency proposed under this rule strikes a reasonable balance between the fixed frequency required for active and inactive sites and the need to occasionally, but not less than once per year, inspect abandoned sites to monitor environmental conditions or changes in operational status of a site. Public comments are requested on the appropriateness of, and the need for, a minimum standard of one complete inspection per year for abandoned sites.

Section 840.11(h)(2)/842.11(f)(2)

These proposed sections would enable the regulatory authority to reduce the inspection frequency under paragraph (h)(1) and (f)(1) above if, based on no less than three consecutive complete annual inspections conducted during a three year period before or after the effective date of this rule, the regulatory authority finds in writing that the abandoned site satisfies two criteria. The first criterion is that no conditions or structures exist at the site which could create an imminent danger to the health or safety of the public or an imminent harm to the environment. The second criterion is that the site has become reasonably stable through natural settlement or revegetation processes. Through years of experience, OSM has found that there exists a class of abandoned sites that have become so stable or are so well buffered from any potential to cause an off-site threat to public health and safety or to the environment as to make further inspections completely unnecessary or necessary on only a two or more year cycle. If, after further reducing the inspection frequency under these sections, information becomes available to the regulatory authority that either criterion no longer applies, the site would need to revert to the appropriate inspection frequency required under paragraphs (h)(1) and (f)(1). Public comments are specifically requested with respect to this approach for reevaluating and possibly reducing the inspection frequency at abandoned sites meeting the criteria under this paragraph and with respect to those persons or class of persons that would be adversely affected by the adoption of this provision further reducing the inspection frequency at abandoned sites.

IV. Procedural Matters

Effect in Federal Program States and on Indian Lands

Proposed § 842.11 would apply through cross-referencing in those States with Federal programs. The programs with Federal programs are California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. The proposed rules would also apply through cross-referencing to Indian lands under Federal programs as provided in 30 CFR part 750. Comments are specifically solicited as to whether unique conditions exist in any of these States or on Indian lands which should be reflected as changes to the national rules or as specific amendments to any or all of the Federal programs or the Indian lands program.

Executive Order 12778 on Civil Justice Reform

This proposed rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this proposed rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The rule if adopted would not preempt State law or regulation.

States would not be required to adopt similar provisions and could continue to inspect abandoned sites at the current frequency if they so choose.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified.

The proposed rule modifies the implementation of the Surface Mining Control and Reclamation Act (SMCRA) as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this proposed rule.

C. Does the rule provides a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

The change to abandoned sites inspection frequency would be prospective only. The basis for determining whether the inspection frequency may be further reduced to less than one complete inspection per year would be three complete inspections conducted over a three year period, all or part of which may be prior to the effective date of the rule.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to the filing of a suit under 30 U.S.C. 1270(b) with regard to any alleged governmental failure to perform a nondiscretionary duty under SMCRA in connection with a matter arising under the proposed rule, the administrative procedures specified in 30 U.S.C. 1270(b)(2) and 30 CFR 700.13 must occur. This statement is not intended to concede that such a suit would be proper following the promulgation of a final rule and does not waive any defense to such a suit.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items.

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

As of August 10, 1992, the Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Federal Paperwork Reduction Act

The collections of information contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 622,560 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., room 640 N.C., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project 1029–0051, Washington, DC 20503.

Public comments are specifically requested regarding the reduction of the information collection burden for each State regulatory authority based on the proposed reduction in the inspection frequency for abandoned sites, as defined in this proposed rule.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under the criteria of Executive Orders 12291 (February 17, 1981) and has determined that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rules do not distinguish between small and large entities. This determination is based on the findings that the regulatory additions proposed by the rule would serve to reduce the costs potentially incurred by OSM and State regulatory authorities in making routine inspections of abandoned sites. Therefore, the rule should not add to the cost of operating a mine in compliance with an approved regulatory program.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) of the proposed rule and has made a tentative finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft EA is on file in the OSM Administrative Record at the address previously specified (see **ADDRESSES**). A final EA will be completed and a final findings made on the significance of any resulting impacts prior to the promulgation of a final rule.

Author

The authors of this rule are Daniel Stocker and Frederick W. Fox, Branch of Inspection and Enforcement, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone 202–208–2550 (Commercial or FTS).

List of Subjects

30 CFR Part 840

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 842

Law enforcement, Surface mining, Underground mining.

Accordingly, it is proposed that 30 CFR parts 840 and 842 be amended as set forth below:

Dated: October 9, 1992.

Richard Roldan,

Deputy Assistant Secretary—Land and Minerals Management.

PART 840—STATE REGULATORY AUTHORITY—INSPECTION AND ENFORCEMENT

1. The authority citation for part 840 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34, unless otherwise noted.

2. Section 840.11 is amended by revising paragraphs (g) (4) and (h) to read as follows:

§ 840.11 Inspections by State Regulatory Authority.

* * * * *

(g) * * *

(4) Where the site is, or was, permitted and bonded:

(i) The permit has either expired or been revoked; and

(ii) The regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

(h) (1) In lieu of the inspection frequency established in paragraphs (a) and (b) of this section, the regulatory authority shall inspect each abandoned site at a rate of no less than one complete inspection per calendar year.

(2) The inspection frequency under paragraph (h)(1) of this section may be reduced if, based on no less than three consecutive annual complete inspections conducted during a three year period before or after the effective

date of this rule, the regulatory authority finds in writing that:

(i) No conditions or structures exist at the site which could create an imminent danger to the health or safety of the public, or that could reasonably be expected to cause significant environmental harm to land, air or water resources; and

(ii) The site is reasonably stable based on the extent of reclamation prior to abandonment, the physical characteristics of the site, or on the extent of settlement or revegetation that has naturally occurred through time.

PART 842—FEDERAL INSPECTIONS AND MONITORING

1. The authority citation for part 842 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34, unless otherwise noted.

2. Section 842.11 is amended by revising paragraphs (e)(4) and (f) to read as follows:

§ 842.11 Federal inspections and monitoring.

* * * * *

(e) * * *

(4) Where the site is, or was, permitted or bonded:

(i) The permit has either expired or been revoked; and

(ii) The Office has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

(f)(1) In lieu of the inspection frequency established in paragraphs (c) of this section, the Office shall inspect each abandoned site at a rate of no less than one complete inspection per calendar year.

(2) The inspection frequency under paragraph (f)(1) of this section may be reduced if, based on no less than three consecutive complete annual inspections conducted during a three year period before or after the effective date of this rule, the Office finds in writing that:

(i) No conditions or structures exist at the site which could create an imminent danger to the health or safety of the public, or that could be reasonably expected to cause significant environmental harm to land, air or water resources; and

(ii) The site is reasonably stable based on the extent of reclamation prior to abandonment, the physical characteristics of the site, or on the extent of settlement or revegetation that has naturally occurred through time.

[FR Doc. 92–30595 Filed 12–17–92 8:45 am]

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Friday
December 18, 1992

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Ophthalmic Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N-145A]

RIN 0905-AA06

Ophthalmic Drug Products for Over-the-Counter Human Use; Ophthalmic Anti-Infective Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that yellow mercuric oxide and certain other ophthalmic anti-infective active ingredients are not generally recognized as safe and effective or are misbranded for over-the-counter (OTC) use. (OTC ophthalmic anti-infectives are drugs applied to the eyelid to treat infections whose symptoms are manifested only in the eyelid.) This final rule evaluates data on yellow mercuric oxide and information concerning OTC availability of ophthalmic anti-infective drug products that were pending review when an earlier final rule on OTC ophthalmic drug products was issued. Also, this final rule lists in a regulation all OTC ophthalmic anti-infective ingredients that have been found to be not generally recognized as safe and effective or are misbranded. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 6, 1980 (45 FR 30002), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC ophthalmic drug products together with the recommendations of the Advisory Review Panel on OTC Ophthalmic Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The agency stated it was concerned that, because the symptoms of minor and serious eye infections are often similar, there may be potential for serious harm to the eye if professional treatment is delayed. The agency, therefore, tentatively determined that the benefits to be derived from OTC use of ophthalmic anti-infectives do not outweigh the risks and proposed to classify these ingredients in Category II (not generally recognized as safe and effective). (See 45 FR 30002.)

The agency's tentative final monograph on OTC ophthalmic drug products was published in the **Federal Register** of June 28, 1983 (48 FR 29788). All ophthalmic anti-infective active ingredients reviewed by the Panel, including yellow mercuric oxide, were classified as Category II (48 FR 29788 at 29796). Subsequently, the agency received new data and information concerning the appropriateness of ophthalmic anti-infective drug products for OTC use and the safety and effectiveness of yellow mercuric oxide as an OTC ophthalmic anti-infective active ingredient (Refs. 1 and 2).

The data concerning yellow mercuric oxide and information concerning the appropriateness of ophthalmic anti-infective drug products for OTC use remained under review at the time of the publication of the agency's final rule on OTC ophthalmic drug products in the **Federal Register** of March 4, 1988. (See 53 FR 6997 and 7076.) The agency's evaluation of those data completes the rulemaking on OTC ophthalmic drug products.

In the advance notice of proposed rulemaking for OTC ophthalmic drug products (45 FR 30002), the agency stated that the conditions excluded from the monograph (Category II) should be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph in the **Federal Register**, regardless of whether further testing is undertaken to justify their future use. The agency also stated that conditions included in the monograph (Category I) should be effective 30 days after the date of publication of the final monograph in the **Federal Register**. In the tentative final monograph, the agency extended this 30-day period to 12 months because of the need to provide a reasonable period of time for relabeling and reformulation of products covered by the monograph (48 FR 29788 at 29789).

In the case of OTC ophthalmic anti-infective drug products, no active ingredient has been determined to be generally recognized as safe and effective for this use. Accordingly, no conditions are being established for this subclass of ingredients in the final monograph for OTC ophthalmic drug products (21 CFR part 349). Thus, there is no need for a 12-month period for relabeling and reformulation of these products. As stated in the advance notice of proposed rulemaking, these conditions should be eliminated from OTC drug products effective 6 months after the date of publication of this final rule. Therefore, on or after June 18, 1993, no OTC drug products containing ophthalmic anti-infective active ingredients that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application.

References

(1) Comments No. C00989, C00996, C01002, LET003, SUP001, SUP002, SUP003, and SUP004, Docket No. 80N-0145, Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

(2) Comments No. C00001, SUP001, SUP002, and SUP003, Docket No. 80N-145A, Dockets Management Branch.

II. The Agency's Conclusions on the Comments

1. Two comments objected to the agency's reclassification of ophthalmic anti-infective ingredients from Category III to Category II in the tentative final monograph (48 FR 29788 at 29796). The comments contended that the agency's action reversed the Panel's recommendation without the support of factual evidence in the record. The comments also asserted that the agency failed to explain why the labeling warnings recommended by the Panel for this class of drug products were not considered sufficient to ensure safe use on an OTC basis. One of the comments indicated that the reclassification was not warranted because of the long history of safe use of OTC ophthalmic anti-infective drug products, as shown in the submissions made to the Panel. This comment stated that the agency's concerns could be handled by appropriate labeling and suggested the following indications for OTC ophthalmic anti-infectives:

(a) "For the relief of discomfort of styes."

(b) "For the treatment of irritation and minor infection of eyelids."

(c) "Soothes surrounding area."

The other comment contended that the agency—in stating that "symptoms of minor and serious infections are often similar" (48 FR 29788 at 29790)—failed to identify such similar "infections" and "symptoms" and did not distinguish the differences between the symptoms of eye infection and eyelid infection. The comment identified stye and blepharitis as two minor eyelid infections that are self-limiting and not threatening to sight and which, therefore, are amenable to

OTC treatment without the intervention of a physician. The comment argued that any potential problem there may be in delaying treatment of eye infections could reasonably be prevented by a cautionary warning in the labeling for such products stating that if relief is not obtained within 7 days, the consumer should consult a physician. The comment included affidavits from six experts in the field of ophthalmology in support of these statements (Ref. 1).

These experts made the following statements in their affidavits: A stye is an infection of the eyelid and not of the cornea or any other part of the eye. The symptoms of stye infection include a feeling of fullness, swelling of the eyelid, burning, itching, crusting, irritation to the eyelid, and the stye itself, but do not include "red eye." Stye infections do not result in a decrease in vision. Blepharitis is an inflammation (chronic bacterial infection, usually staphylococcal) of the eyelid (lash follicles and meibomian glands). Symptoms include redness of the lid with some swelling and tenderness. Blepharitis does not cause "red eye" and does not affect vision. According to these experts, infections such as stye and blepharitis are self-limiting and not threatening to sight, and their symptoms are easily perceived by consumers such that self-medication with an OTC anti-infective drug product for at least 7 days would not pose any significant risk. One of the experts stated that if symptoms persist or intensify after a few days, the patient should seek medical advice. These experts felt that consumers could easily differentiate between minor eyelid infections and serious eye infections because serious eye infections invariably bring about red eye, pain, and a decrease in vision.

The comment added that the agency's proposed action would increase the cost of medical care because consumers would have to visit a physician before obtaining any treatment for stye or blepharitis. The comment suggested that it would be more appropriate for the agency not to allow the sale of OTC preparations for infections of the eye (the globe area) while permitting, with appropriate warnings, the OTC sale of effective drugs for the treatment of minor infections of the eyelid, such as stye and blepharitis. One of the experts felt it would be valuable to consumers to have available a safe and effective nonantibiotic OTC preparation for the early treatment of stye and blepharitis. This expert stated that frequent use of antibiotics leads to antibiotic resistance, and whenever a nonantibiotic preparation can be used in place of an antibiotic, it should be recommended.

Another comment stated that in the absence of any facts to support its proposal to restrict all ophthalmic anti infective drugs to prescription status, or any reasoned discussion for this position, FDA's proposal is arbitrary and capricious.

In the advance notice of proposed rulemaking (45 FR 30002), the agency stated its initial determination that ophthalmic anti-infectives should be classified in Category II in the tentative final monograph and invited specific comment. Only one comment was received, and that comment did not raise any of the issues offered by the current comments. (See 48 FR 29788 at 29790, paragraph 4.) Therefore, the agency did not find it necessary to present a detailed discussion in the tentative final monograph.

The agency points out that the Panel identified stye, blepharitis, and conjunctivitis as ophthalmic disorders that might be amenable to OTC treatment. However, the Panel also recognized that of the three conditions, self-treatment of conjunctivitis carries the greater risk, because stye and blepharitis are usually self-limiting and complications are rare. The Panel also stated that, while conjunctivitis is usually a self-limiting disorder, if the condition is severe and not responsive to medication, secondary corneal infections and ulcerations may occur (45 FR 30002 at 30012).

The agency has additional concerns, principally related to the similarity between the symptoms of conjunctivitis and those of very serious conditions of the eye, such as uveitis or the presence of a foreign body in the eye. For example, the Panel listed the symptoms of conjunctivitis as a "redness, discharge and the feeling of sand in the eye" (45 FR 30012). These symptoms are very similar to the symptoms of uveitis, which the Panel identified as "a redness of the eye primarily encircling the cornea" (45 FR 30011), or the symptoms of a foreign body imbedded in the cornea, which the Panel characterized as "redness of the eye and sensation of foreign matter in the eye" (45 FR 30010). The Panel recognized both uveitis and a foreign body embedded in the cornea as serious disorders not amenable to OTC treatment. Thus, the agency concludes that OTC treatment is inappropriate for conjunctivitis because its symptoms are similar to those of more serious disorders.

The agency believes that some consumers could distinguish the symptoms of minor eyelid conditions that are manifested only in the eyelid—such as blepharitis and stye—from those of serious eye infections. Nevertheless, the agency concludes that such eyelid conditions may not be amenable to OTC drug treatment with an ophthalmic anti-infective ingredient because consumers may not be able to accurately diagnose infectious blepharitis that could be treated with an ophthalmic anti-infective and stye occurs below the eyelid surface and would not be expected to be effectively treated by a topical anti-infective drug. In addition, no OTC drug product has been found to be safe and effective for ophthalmic anti-infective use.

The term blepharitis refers to an inflammation of the eyelid that may be caused by localized hypersensitivity factors, bacterial infections, skin conditions such as seborrheic dermatitis, or possibly combinations of these conditions. Signs and symptoms such as redness, swelling, burning, itching, crusting, and irritation of the eyelid are not specific for bacterial infections of the eyelid. One comment maintained that consumers could readily differentiate between infectious and noninfectious blepharitis. However, because the signs and symptoms of blepharitis are frequently the same no matter what the cause, it is unlikely that most consumers could make such a distinction. Even health professionals frequently have trouble doing so. For example, the principal investigator of one of the clinical studies submitted in support of yellow mercuric oxide as an OTC ophthalmic anti-infective (Ref. 2) was unable to make this distinction more than 50 percent of the time. Of the 150 subjects randomized into a study, only 79 actually had bacterial colony counts high enough to meet the entrance criteria. The remainder did not have bacterial colony counts high enough to meet the entrance criteria and probably did not have infectious blepharitis. (See comment 3.) If the blepharitis results from a nonbacterial cause, there should be no need for and no expected benefit from using an anti-infective drug.

In addition, a stye or hordeolum is a localized, purulent inflammatory infection of the sebaceous or sweat glands in the eyelids, usually caused by staphylococci. Basically, it is a pustule or abscess within the lumen of the gland. The majority of styes are naturally self-limiting and resolve without treatment. The application of a topical anti-infective ingredient to an existing stye, as to an abscess elsewhere in the body, would be expected to have little, if any, effect on the clinical course of the abscess.

References

(1) Comment No. C00989 Docket No. 80N-0145, Dockets Management Branch.

(2) Comment No. LET003, Docket No. 80N-0145, Dockets Management Branch.

2. One comment objected to what it perceived as an agency requirement that the mechanism of action of yellow mercuric oxide be demonstrated before it can be generally recognized as effective. Based on an agency statement made in a **Federal Register** notice concerning the status of diphenhydramine as an OTC antitussive drug product (44 FR 51512 and 51517), the comment stated that it is not an absolute requirement that a "precise mechanism of action of a drug" be shown for the drug to be considered effective.

The agency agrees with the comment that it is not an absolute requirement to show the precise mechanism of action of a drug. A presumed mechanism based on some evidence is needed, but the specific mechanism is often not known and would not be required in this case for approval. However, as the comment points out, 21 CFR 330.10(a)(4)(ii) states that, "Effectiveness means a reasonable expectation that, in a significant proportion of the target population, the pharmacological effect of the drug * * * will provide clinically significant relief of the type claimed." In order to determine that a drug provides such relief, information about the pharmacological effect of the drug must be known, and it must be possible to identify a specific target population that matches the claim. If the product claims to "clear scaling (or redness) of the eyelids," then the study population must have scaling (or redness). It would be necessary in the clinical trials to show that the scales (or redness) were cleared. If the product claims to "clear minor eyelid infections," then the population under study must have "minor eyelid infections," and it would be necessary to show that the drug product has cleared the infecting organism. For example, the mere presence of a bacterial organism such as *Staphylococcus epidermidis* on the eyelids is not equivalent to an infection. The role of *S. epidermidis* is not clearly established in blepharitis. (See comment 3.) In addition, there are many forms of blepharitis, including seborrheic blepharitis, which do not have an infective component.

3. One comment submitted three clinical studies in support of the safety and effectiveness of yellow mercuric oxide as an ophthalmic anti-infective ingredient for OTC use in the treatment of styes, blepharitis, and simple eyelid infections (Refs. 1 through 4).

The agency has evaluated these three studies and determined that they are inadequate to support monograph status for yellow mercuric oxide as an OTC ophthalmic anti-infective ingredient for the treatment of minor external eyelid infections, such as stye or blepharitis. The agency has also determined that two additional, independent, well-controlled studies are necessary to establish that yellow mercuric oxide is generally recognized as a safe and effective ophthalmic anti-infective ingredient. In addition, adequate data supporting the ability of consumers to differentiate between infectious and noninfectious blepharitis are necessary to ensure that ophthalmic anti-infective drug products can be used properly on an OTC basis.

The clinical data submitted by the comment included three studies: one by Kastl (Refs. 1 and 2), one by Hyndiuk and Burd (Refs. 1 and 2), and one by Yamamoto (Refs. 3 and 4). In the clinical studies by Kastl and by Hyndiuk and Burd, subjects with a clinical diagnosis of minor external eyelid infections received a random, double-masked treatment with either the test drug containing 1 percent yellow mercuric oxide with 2.5 percent boric acid as a stabilizer in an ophthalmic ointment base or a placebo ointment containing 2.5 percent boric acid in an ophthalmic ointment base. The ointments were applied twice daily for 7 days. The subjects in the studies recorded side effects on a diary card. The microbiological evaluation of cultures from swabs of the affected eyelids was a criterion for the inclusion of subjects in both of these clinical studies as well as for the determination of the success or failure of the treatment.

In the clinical study by Kastl (Refs. 1 and 2), a slit lamp examination was performed on each subject to confirm whether the subject had a stye or blepharitis prior to entry into the program. Specimens for laboratory cultures were taken from affected eyelids on day 0 and then on days 4 and 7 of the treatment. Ten subjects had positive cultures of *Staphylococcus aureus* (*S. aureus*) and all other subjects had cultures of *S. epidermidis*. Of 66 subjects completing the course of treatment, 37 used the test drug and 29 used the placebo. The comment claims that 89 percent of the test subjects showed improvement by the seventh day of treatment as compared with 57 percent of the subjects who used the placebo ointment.

In the study by Hyndiuk and Burd (Refs. 1 and 2), specimens from the affected eyelids were cultured on day 0 and then again on days 3 and 7 of the treatment. The prevalent organism isolated was *S. epidermidis*, with only one subject having a *S. aureus* infection. Of 41 subjects completing the 7 days of treatment, 20 were given the active medication and 21 the placebo. The data summary states that the use of active medication resulted in a significant decrease in the numbers of bacteria by day 3, and these low counts were maintained through day 7; whereas, the placebo group showed no significant difference in bacterial counts between days 0, 3, and 7.

The subjects in this study were also assessed for the clinical symptoms of redness, scaling, and swelling of the eyelid on days 1, 3, and 7, and their symptoms were recorded daily on a diary card. For the clinical evaluation of symptoms, the degree of blepharitis was graded on a scale from 0 to 4+ (0 = no blepharitis; 1+ = erythema; 2+ = erythema and exudation fibrinous scaling; 3+ = erythema, exudation or fibrinous scaling, and edema; 4+ = erythema, exudation or fibrinous scaling, edema, and ulceration) and recorded on a subject record form. The comment contended that for the group receiving active medication, the clinical data show a decrease in the severity of the lid disease of 87 percent (17/20) by day 3, and 95 percent (19/20) by day 7; whereas, the group receiving placebo showed a 52 percent (11/21) improvement by day 3, and 64 percent (14/22) improvement by day 7.

The study by Yamamoto (Refs. 3 and 4) involved 34 subjects with acute simple conjunctivitis, blepharitis, or stye and greater than 20 colony forming units of organisms with pathogenic potential counted on initial culture. The subjects received a random, double-blind treatment with either the test drug containing 1 percent yellow mercuric oxide, cod liver oil, zinc sulfate, and boric acid in a special ophthalmic base or with the ophthalmic base alone. The subjects were initially examined with a slit lamp biomicroscope, and their visual acuities were measured. They were also assessed for the clinical symptoms of lid or conjunctival inflammation, redness, and discomfort. The subjects were instructed to use the ointments three times daily and to maintain a daily record of their symptoms during the course of the study. Return visits were scheduled for the third and seventh days of treatment. Microbial cultures of the affected eyes were taken before starting treatment. After each of the scheduled visits, the subjects' clinical progress, tolerance of the medication, and the bacterial colony counts were assessed and tabulated. The results of the study were reported to

demonstrate that, at day three, the mean bacterial colony count of the treatment group decreased significantly when compared with the decrease of the mean bacterial colony count of the placebo group. The subjective improvement ratings made by the physician and the subject were consistently higher for the treatment group, but the differences were not statistically significant.

The agency determined that these studies were not designed to provide adequate information on the effectiveness of yellow mercuric oxide for relieving the symptoms associated with stye or blepharitis. The studies did not differentiate between subjects with stye or blepharitis. The agency considers stye and blepharitis as different disorders that should be analyzed separately to support the effectiveness of this ingredient.

In addition, the studies depended largely on the analysis of microbiological findings to support the effectiveness of yellow mercuric oxide. However, the agency does not consider microbiological parameters as adequate to use as the primary support of the effectiveness of an anti-infective agent; data demonstrating a corresponding improvement in key symptoms or in the condition of the subject are also needed. The principal basis for demonstrating effectiveness should be the percentage of subjects clinically cured. In the case of an OTC drug with a 7-day limit on use, degrees of improvement without cure are not sufficient evidence of effectiveness, because the subject must discontinue use at the end of the treatment period. Microbiological analyses are necessary to establish that the correct subject population was studied, but are secondary analyses.

Further, the agency questions the role of the two most frequently found microorganisms (*S. epidermidis* and other coagulase-negative staphylococci) in the occurrence of blepharitis and stye. Some of the articles submitted by the comment (Ref. 5) to support the role of *S. epidermidis* in blepharitis questioned the pathogenicity of the organism. Lowy and Hammer (Ref. 6) state that, ordinarily, *S. epidermidis* is an organism with low virulence, and that breaks in the host defense caused by surgery, catheter placement, prosthesis insertion, or immunosuppression are usually a prerequisite for infections. Dougherty and McCulley (Ref. 7) state that it is questionable whether coagulase-negative staphylococci such as *S. epidermidis* play a significant role in blepharitis. The authors added that the role is not obvious, because these species are isolated in such high frequency from all groups and normal persons. Dougherty and McCulley concluded that bacteria do not have a primary role in the pathogenesis of most chronic blepharitides.

The comment also cited: (1) An article by Valenton and Okumoto (Ref. 8) that shows that cell-free filtrates of *S. epidermidis* when injected subconjunctivally will cause an inflammatory response and (2) an article by Kahn, Hoover, and Ide (Ref. 9) that includes two case reports which implicate *S. epidermidis* as the cause of blepharitis in immunosuppressed subjects. The comment also noted the high incidence of *S. epidermidis* in postsurgical ophthalmitis and implied that because *S. epidermidis* can cause disease when the normal defense mechanisms are bypassed, it can also cause disease in an uncompromised host. Seal, Barrett, and McGill (Ref. 10) state that although both *S. aureus* and *S. epidermidis* were isolated from subjects with blepharitis, the significance of the *S. epidermidis* is doubtful because it was present at a higher percentage in the controls than in the subjects (50 percent isolated from controls versus 34 percent isolated from subjects). Additionally, in the Hyndiuk and Burd study (Refs. 1 and 2), several of the subjects in the placebo group were improved even though their colony counts increased. This is additional evidence against the hypothesis that *S. epidermidis* is a major cause of blepharitis. The agency concludes that *S. epidermidis*, the predominant organism cultured in the three clinical studies, has an uncertain role in the disease process associated with blepharitis or stye.

The agency also found methodological problems with these studies: (1) The way colony counts were evaluated in one study, (2) how "noncompliant" subjects and the statistical analysis used were evaluated in another study, and (3) the use of an inappropriate placebo and subject selection criteria in another study. The agency's detailed comments on the data are on file in the Dockets Management Branch (address above) (Ref. 11).

The comment subsequently provided additional information and data (Ref. 5) that included the following: (1) A statistical reanalysis separating the stye and blepharitis subjects in the three clinical studies, (2) subject record forms for the Kastl study (Refs. 1 and 2) from which clinical assessments were collected and used in the statistical reanalysis of these data, and a description of how the clinical signs of blepharitis were assessed in this study, (3) a description of the statistical analysis used in the Hyndiuk and Burd study (Refs. 1 and 2) and the lid culture methods used in this study, and (4) a discussion of the pathogenicity of *S. epidermidis* and the safety of yellow mercuric oxide for use on minor eyelid infections.

Although the comment's reanalysis of the Hyndiuk and Burd study (Ref. 5) demonstrated a statistically significant difference between yellow mercuric oxide and the placebo and the agency's analysis of the adjusted colony counts from day 3 and day 7 demonstrate a statistically significant difference between yellow mercuric oxide and the placebo, the agency's analysis of the adjusted clinical scores for day 3 and day 7 showed no statistically significant difference between yellow mercuric oxide and the placebo. As stated above, the agency does not consider microbiological parameters as adequate to use as the primary support of the effectiveness of an anti-infective agent; clinical data demonstrating a corresponding improvement in key symptoms or in the condition of the subject are also needed.

For the Kastl blepharitis study (Refs. 1, 2, and 5), the day 3 and day 7 adjusted colony counts from blepharitis subjects show no statistically significant difference between yellow mercuric oxide and the placebo. However, the day 3 and day 7 adjusted clinical scores from the blepharitis subjects demonstrate a statistically significant difference between yellow mercuric oxide and the placebo.

For the Yamamoto blepharitis study (Refs. 3, 4, and 5), the day 3 and day 7 unadjusted colony count data were analyzed by the investigator, who found no statistically significant difference between yellow mercuric oxide and the placebo. In the reanalysis of the data (Ref. 5), all the colony counts were changed from 600 to 9,000 without explanation, and the reanalysis of these revised day 3 and day 7 unadjusted colony counts shows a statistically significant difference between yellow mercuric oxide and the placebo. However, the agency's analysis of the day 3 and day 7 colony counts adjusted to the initial colony counts shows no statistically significant difference between yellow mercuric oxide and the placebo. The relevance of these differences between statistically significant clinical scores and colony counts is discussed above.

The agency summarized the blepharitis and stye subjects' microbiological and clinical data from the Kastl and Yamamoto studies (Refs. 1 through 4) according to how many treatments failed, how many subjects

improved, and how many subjects were cured. Analysis of the summarized data using a Wilcoxon Rank Sum test for the microbiological data and the Fisher's Exact test for the clinical data demonstrated that neither of these studies showed a statistically significant difference between yellow mercuric oxide and the placebo.

The submitted reanalysis of the combined stye subjects from the Yamamoto and Kastl studies (Ref. 5) demonstrated no statistically significant difference between treatment with yellow mercuric oxide and the placebo. No details were provided by the comment. The agency analyzed the stye results that were summarized according to failure, improvement, or cure and found that the Yamamoto study clearly shows that sties are as well treated by the placebo as the yellow mercuric oxide, each curing two of four subjects. Also, the Kastl study demonstrated that the placebo was significantly better than the yellow mercuric oxide for the treatment of sties. Yellow mercuric oxide had a failure rate of 21 percent, and the placebo failure rate was 0 percent ($p < .02$). There were no stye subjects in the Hyndiuk and Burd study.

Although none of the three clinical studies submitted shows a significant difference in the clinical cure rates, two of the three demonstrated a significant decrease in the number of *S. epidermidis* cultured from the affected eyelids. However, as discussed above, the clinical significance of this accomplishment is questionable. The agency's detailed comments on the data are on file in the Dockets Management Branch (address above) (Ref. 12).

The comment further reanalyzed the three clinical studies conducted by Hyndiuk and Burd, Kastl, and Yamamoto to substantiate the effectiveness of yellow mercuric oxide for the treatment of blepharitis (Ref. 13). The agency has evaluated the comment's reanalysis of the data and determined that it does not address basic design flaws in the studies as discussed below. Although the comment's proposed method of reanalysis, the modified Wilcoxon test, may be appropriate for the analysis of some specific portions of the data, the agency finds the reanalysis inadequate because the design of these studies is flawed for many reasons. The studies did not separately randomize for different ophthalmic disorders (i.e., stye and blepharitis in the Hyndiuk and Burd and the Kastl studies; stye, blepharitis, and conjunctivitis in Yamamoto's study).

Also, the agency considers it important that subjects selected for clinical studies of effectiveness reflect the population expected to use the drug product. In the three studies submitted by the comment, the inclusion criteria relied on subjects being selected on the basis of medical judgment and the results of laboratory testing. Subjects were excluded if they did not meet specifically identified initial microbial counts (110 colonies in the Hyndiuk and Burd study (Refs. 1 and 2), 50 colonies in the Kastl study (Refs. 1 and 2), and 20 colonies in the Yamamoto study (Refs. 3 and 4)). The microbiological testing criteria were not related to symptoms that can be described in the product's labeling and that a consumer could use to self-diagnose an eyelid condition that would be amenable to treatment with an OTC ophthalmic anti-infective drug product. The results of microbiological tests would not be available to consumers without additional medical advice. Therefore, the subjects in these studies do not correspond to the consumer population that would be expected to use the drug based on the product's OTC labeling.

The degree of blinding may have been incomplete. It is not clear that the placebo and test drugs were identical in appearance. Based on the appearance of samples of placebo used in the clinical studies that were submitted to the agency, an observer would have little difficulty in categorizing the placebo and test drug into two different groups and could easily identify the placebo by comparing the test drug against the currently marketed product.

The dosing of test drug in the Kastl and Yamamoto studies does not match the proposed directions for use. In both of these studies, subjects used the medication three times a day. The labeling of the marketed product directs consumers to apply the product two times a day.

The studies did not include eyelid scrubs as part of the required regimen for the subjects in the studies. As discussed in the reports of the Hyndiuk and Burd and Yamamoto studies, "staphylococcal blepharitis is a chronic condition with periods of exacerbation and remission. It is usually kept under control by a regimen of eyelid hygiene with application of an antibacterial ointment for episodes of exacerbation. Hygiene consists of cleansing the eyelid margins with diluted solution of a mild shampoo. Hot compresses and lid massage are sometimes recommended as adjunct." It is the agency's view that a placebo ointment, prescribed in the absence of a regimen of eyelid hygiene, may be expected to adversely affect the condition. In this case, therefore, the placebo may have a negative effect and the active ingredient would be perceived to have a beneficial effect by comparison, even though there was no true beneficial effect. In addition, the studies did not include followup examinations after the subjects stopped the medication to check for "rebounds or exacerbations" of the infection.

The data sets upon which the analyses were performed are not properly and/or specifically identified. The inclusion and exclusion criteria used to determine the data sets in previous analyses are open to question. The agency disagrees with the data sets the comment used for analysis. The data set from the Hyndiuk and Burd study is in question for the following reasons: (1) The original report states that there were 59 subjects. The second revision of the report states that there were 58 subjects. (2) Subjects who stopped using the test product because of an adverse reaction should not have been excluded from the study results. Subjects 37, 38, and 56, each in the active treatment group, were excluded due to adverse reactions. These subjects should have been counted as treatment failures. (3) Subjects should not have been excluded due to noncompliance if the reason for noncompliance was an adverse reaction to the study medication. The subjects in this study who were excluded due to noncompliance reported reasons for noncompliance and, in most cases, these were adverse reactions. This included subjects in both the active group: 5 (burning after the first application), 19 (developed "red eyes" after the first application), 24 (omitted dose on each day because of blurred vision), 59 (ointment caused tearing and blurred vision); and in the placebo group: 17 (subject felt the product was not working) and 43 (omitted two doses because the subject did not want his vision to be blurred). (4) One of the subjects in the active group was listed as "lost to followup" but was known to have discontinued the medication due to an adverse reaction. Although it is true that subject 48 was hospitalized during the study period and did not return for the followup visit on day 7, the investigator was aware that the subject had stopped the test drug on day 4 because of severe burning. This subject should have been included as a treatment failure. (5) Subjects using corticosteroids (known to be effective in treating inflammation) should have been excluded from the analysis but were not (e.g., subject 13). (6) The 7-day followup did not always occur on day-7. Subject 11 had a pretreatment visit on March 29, 1982 and a day-7 visit on April 9, 1982,

which was 11 days afterward. Subject 57 had a pretreatment visit on November 16, 1982 and is recorded as having a day-7 followup on November 18, 1982, which was 2 days afterward. (7) The pretreatment visit date (March 8, 1982) and the culture date (March 9, 1982) do not match for subject 4. (8) Subject 45 was reported as a "no show" for the day-3 visit; however, the subject did report for a day-3 culture. (9) Subject 49 was entered into the study on September 21, 1982 as an 80-year-old white female and then re-entered on September 29, 1982 as an 80-year-old black female. (10) The study used multiple evaluators without identifying the evaluators. For example, as noted by the handwriting on the case report forms for subject 35, one individual evaluated the subject on days 1 and 3 and a second individual evaluated the subject on day 7. Only one evaluator is identified on the case report form. (11) The investigator did not identify how discrepancies between eyes would be handled and did not handle them consistently. Specific examples of such inconsistencies are on file in the Dockets Management Branch (address above) (Ref. 14).

The data set from the Kastl study is in question for the following reasons: (1) The copy of the case report form for subject 99 submitted to the agency on July 8, 1988 has a blank space for the eyelid examination on day 7. Another copy of the same case report form submitted June 26, 1984 has an evaluation recorded in this space. It is unclear why these case report forms are different. (2) The case evaluation forms are frequently not signed by the examining physician (e.g., subjects 90, 93, 95, 96, 97, 98, etc.). The investigator frequently did not sign the case report forms and, in multiple cases, the investigator's signature was signed by another individual (e.g., subjects 20, 22, 40, 46, 55, etc.). (3) Different evaluation scores have been written on top of previous evaluation scores so that it is not possible to tell which is the correct value. For example, the day-3 evaluation for subject 103 has a "1+" and a "2+" written on top of one another. Subject 104 has a "+" and a "0" written on top of one another. Subject 127 has a "1+" and a "0" written on top of one another. Subject 128 has a "1+" and a "2+" written on top of one another. (4) There were multiple evaluators involved using different evaluation systems. Some evaluations listed 0+, +, 2+ blepharitis; others listed 1+, 2+ scaling; while others listed just blepharitis. The comparability of these different evaluators is unclear. (5) The subject diary cards were inconsistently filled out. Although the diary cards had clear instructions, the instructions were rarely followed. (6) Colony counts were summed and recorded as the total number of colonies excluding diphtheroids. The appropriateness of combining all organisms except diphtheroids to produce a single number of colonies is questionable. It is unclear why diphtheroids were the only organisms disregarded. (7) Some subjects with low colony counts were discontinued at the day-3 visit, while others were permitted to complete the study. This inconsistency in discontinuing subjects is questionable, particularly because the investigator listed only 79 of the original 150 subjects as eligible for analysis.

The data set for the Yamamoto study is in question for the following reasons: (1) The colony counts are not always correctly recorded in the data set. For example, subject 76 had a day-3 culture with 55 colonies of staphylococcus and the data set lists 50 colonies. Also, subject 19 had a day-3 culture with 198 colonies of staphylococci and 3 colonies of streptococci. The data set lists 101 colonies. (2) It is not clear how the physician's evaluation score was completed. It appears that the evaluation was made by subtracting the day-7 score from the day-1 score. If this was the case, the evaluations for subjects 31, 41, and 42 are in error. (3) The culturing technique permitted cultures from both the conjunctiva and the eyelids. It is therefore difficult to determine the actual source of the organisms. (4) Colony counts were summed and recorded as the total number of colonies excluding diphtheroids. The appropriateness of combining all organisms except diphtheroids to produce a single number of colonies is questionable. It is unclear why diphtheroids were the only organisms disregarded. (5) The submitted copy of the case report forms was not of sufficient quality to read many of the evaluations.

The culture method used in this study was not sufficiently quantitative to permit reliance on numerical colony counts. An inflamed eyelid with a eyelid culture identified as "too numerous to count" bacteria is suggestive of blepharitis. If the inflammation in that eyelid is noted to resolve, and a followup eyelid culture fails to yield viable bacteria, then that eyelid would be "cured." In situations between these extremes, classifications of infection and cure may be questioned. The fact that each study identified a different lower limit of normal is indicative of variability and a lack of standard agreement.

As stated above, a causal role for *S. epidermidis* has not been resolved. The role of any other organisms in blepharitis has also not been established. There are multiple examples in these studies of subjects getting clinically worse when the colony count of *S. epidermidis* decreases, of subjects getting clinically worse when the colony count increases, of subjects getting clinically better when the colony count decreases, and of subjects getting clinically better when the colony count increases. The agency's detailed comments on the data are on file in the Dockets Management Branch (address above)(Ref. 14).

The agency concludes that any additional re-analyses of these clinical studies should not be conducted. The design flaws are considered too substantial to consider these clinical studies as adequate and well-controlled.

References

(1) Comment No. LET003, Docket No. 80N-0145, Dockets Management Branch.

(2) Comment No. SUP002, Docket No. 80N-0145, Dockets Management Branch.

(3) Comment No. C01002, Docket No. 80N-0145, Dockets Management Branch.

(4) Comment No. SUP004, Docket No. 80N-0145, Dockets Management Branch.

(5) Comments No. C00001 and SUP001, Docket No. 80N-145A, Dockets Management Branch.

(6) Lowy, F. D., and S. M. Hammer, "*Staphylococcus epidermidis* Infections," *Annals of Internal Medicine*, 99:834-839, 1983.

(7) Dougherty, J. M., and J. P. McCulley, "Comparative Bacteriology of Chronic Blepharitis," *British Journal of Ophthalmology*, 68:524-528, 1984.

(8) Valenton, M. J., and M. Okumoto, "Toxin-Producing Strains of *Staphylococcus epidermidis* (*albus*)," *Archives of Ophthalmology*, 89:136-139, 1973.

(9) Khan, J. A., D. Hoover, and C. H. Ide, "Methicillin-Resistant *Staphylococcus epidermidis* Blepharitis," *American Journal of Ophthalmology*, 98:362-363, 1984.

(10) Seal, D. V., S. P. Barrett, and J. I. McGill, "Aetiology and Treatment of Acute Bacterial Infection of the External Eye," *British Journal of Ophthalmology*, 66:357-360, 1982.

(11) Letter from W. E. Gilbertson, FDA, to H. Gordon, Commerce Drug Co., dated November 3, 1987, coded LET007, Docket No. 80N-0145, Dockets Management Branch.

(12) Letter from W. E. Gilbertson, FDA, to H. Gordon, Commerce Drug Co., dated August 25, 1989, coded LET001, Docket No. 80N-0145A.

(13) Comment No. SUP003, Docket No. 80N-145A, Dockets Management Branch.

(14) Letter from W. E. Gilbertson, FDA, to H. Gordon, Commerce Drug Co., dated February 22, 1991, coded LET006, Docket No. 80N-145A, Dockets Management Branch.

4. One comment presented the results of an in vitro study (Ref. 1) as a comparison of the efficacy of 1 percent yellow mercuric oxide ointment with that of several ophthalmic ointments commonly prescribed for eye infections.

The agency has reviewed the in vitro study and determined that it is inadequate to support the effectiveness of yellow mercuric oxide as an ophthalmic anti-infective. The ointments used in this study contained erythromycin, bacitracin, 10 percent sulfacetamide, and a combination of bacitracin, neomycin, and polymyxin. The efficacy of the products was determined by using a "zone of inhibition test" where antibacterial activity of the test drugs was determined by the diameter of the bacteria-free zone that each product created when placed on a culture plate streaked with *S. aureus*. The results of the in vitro effectiveness test indicated that the 1-percent yellow mercuric oxide ointment had an antimicrobial effect against the strains of *S. aureus* tested. However, the test was not adequately designed or standardized to make a valid comparison of the different active drug products used. Further, while the agency considers the results of the in vitro study as a useful indicator of activity, the results cannot be directly related to the relief of the symptoms of minor eyelid infection. The agency's detailed comments on the data are on file in the Dockets Management Branch (address above) (Ref. 2).

References

(1) Comment No. SUP003, Docket No. 80N–0145, Dockets Management Branch.

(2) Letter from W. E. Gilbertson, FDA, to H. Gordon, Commerce Drug Co., dated November 3, 1987, coded LET007, Docket No. 80N–0145, Dockets Management Branch.

5. One comment submitted the results of two 21-day rabbit eye safety studies (Ref. 1) to support the safety of the use of yellow mercuric oxide as an ophthalmic anti-infective.

In the first study, six new Zealand white rabbits had 0.1 milliliter (mL) per day of the test ointment administered in the lower eyelid of one eye, while two rabbits, as negative controls, received no treatment. The data included a table of initial and weekly bodyweights of the test animals and the amount of mercury in the blood of the animals at the time of sacrifice. The agency finds this study inadequate because it did not include eye irritation scores and thus does not support the safety of yellow mercuric oxide.

In the second study, 30 New Zealand white rabbits were separated into groups of 10. Group I received 0.1 mL of the 1-percent yellow mercuric oxide ointment once daily; Group II received 0.1 mL of the 1-percent yellow mercuric oxide ointment twice daily; and Group III, the control group, received 0.1 mL physiological saline twice daily. The data consisted of daily ocular irritation scores, weekly bodyweights, and the initial and terminal determination of "urinalytical," hematological, and blood chemistry values for the 30 rabbits. The agency finds this study was properly designed and the data indicate that yellow mercuric oxide does not cause serious ocular damage.

However, the agency has also reviewed statements made by the Panel and the submitted clinical data (Refs. 2 through 5) and determined that the available human safety data are inadequate to support the safety of yellow mercuric oxide. The Panel concluded that there was insufficient evidence to determine the safety of this ingredient because of the sensitizing properties of mercuric salts (45 FR 30002 at 30031). Included in the Panel's review were a report of irritation (in the literature) and a practicing ophthalmologist's report of serious problems resulting from the use of yellow mercuric oxide ointment. Data from the submitted clinical studies suggest that a number of subjects may have developed adverse effects from yellow mercuric oxide. Among the compliant subjects in the Kastl study (Refs. 2 and 3), more subjects in the active drug group (53 percent) reported side effects, such as itching, burning, tearing, redness, or gritty feeling, than did subjects in the placebo group (31 percent). In the Hyndiuk and Burd study (Refs. 2 and 3), 10 percent of the subjects using active medication (3 of 30) dropped out of the study because of side effects to the medication (at least two side effects were considered to be allergic reactions). None of the 29 subjects using the placebo dropped out of this study because of a side effect. However, approximately the same number of subjects using the active medication as those using the placebo reported side effects in the study (10 and 9, respectively). No data on adverse reactions were provided in the Yamamoto study (Refs. 4 and 5). It is difficult to draw any firm conclusions from these data, but they suggest that the incidence of side effects resulting from the use of 1 percent yellow mercuric oxide ointment may not be insignificant. Because the submitted data were not sufficient to draw any firm conclusions, it is necessary to submit additional human safety data.

References

(1) Comment No. SUP003, Docket No. 80N–145A, Dockets Management Branch.

(2) Comment No. LET003, Docket No. 80N–0145, Dockets Management Branch.

(3) Comment No. SUP002, Docket No. 80N–0145, Dockets Management Branch.

(4) Comment No. C01002, Docket No. 80N–0145, Dockets Management Branch.

(5) Comment No. SUP004, Docket No. 80N–0145, Dockets Management Branch.

III. The Agency's Final Conclusions on OTC Ophthalmic Anti-Infective Drug Products

The agency has determined that no ophthalmic anti-infective active ingredient has been found to be generally recognized as safe and effective and not misbranded for any use in OTC ophthalmic drug products. The agency reiterates its position that no medication should be used in or near the eye unless it has been shown to be safe and effective for its intended use. The agency concludes: (1) Not all minor eyelid conditions are caused by bacteria, (2) the comments have not provided data to demonstrate that the consumer can differentiate between bacterial and nonbacterial conditions, (3) treatment with an anti-infective ointment would not be expected to hasten the resolution of a stye, and (4) data are inadequate to demonstrate that yellow mercuric oxide is safe and effective for the treatment of styes or blepharitis. Therefore, based on available data, the agency has determined that yellow mercuric oxide is not an appropriate anti-infective ingredient for the OTC treatment of minor eyelid infections. The agency is not including yellow mercuric oxide, or any other anti-infective ingredient, in the monograph for OTC ophthalmic drug products.

Therefore, any ingredient that is labeled, represented, or promoted for OTC use as an ophthalmic anti-infective is considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and is a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321(p)), for which an approved application or abbreviated application under section 505 of the act (21 U.S.C 355) and part 314 of the regulations (21 CFR part 314) is required for marketing. In appropriate circumstances, a citizen petition to amend the monograph (21 CFR part 349) may be submitted in support of ingredients for use as ophthalmic anti-infectives under 21 CFR 10.30 in lieu of an application. Any OTC drug product containing yellow mercuric oxide or any other ingredient for use as an ophthalmic anti-infective active

ingredient initially introduced or initially delivered for introduction into interstate commerce or repackaged or relabeled after the effective date of this final rule is not in compliance with the regulation and is subject to regulatory action.

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC ophthalmic anti-infective drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC ophthalmic anti-infective drug products is not expected to pose such an impact on small businesses. This final rule only affects the status of OTC ophthalmic anti-infective drug products. There are a limited number of OTC ophthalmic drug products that contain anti-infective ingredients. The Panel reviewed a limited number of OTC ophthalmic drug products that contained the anti-infective ingredients boric acid, mild silver protein, or yellow mercuric oxide. The agency checked a number of sources and found only one manufacturer of an OTC mild silver protein ophthalmic drug product and one manufacturer of an OTC yellow mercuric oxide ophthalmic drug product. The agency has also checked with a number of manufacturers and been informed that they no longer market ophthalmic drug products containing boric acid or yellow mercuric oxide (Ref. 1). Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Reference

(1) Memoranda of telephone conversations between K. Freeman, FDA, and various drug company representatives, in OTC Vol. 101FM, Docket No. 80N–145A, Dockets Management Branch.

In its final conclusions on OTC ophthalmic drug products (53 FR 7076 at 7089), the agency listed the ophthalmic ingredients that it considered to be monograph and stated that, with the exception of anti-infective drug products, all other ophthalmic active ingredients are considered nonmonograph ingredients. At that time, none of these nonmonograph ingredients was listed in a regulation. Since then, the agency has established 21 CFR 310.545 in which it listed certain active ingredients that are not generally recognized as safe and effective for certain OTC drug uses. The agency is adding § 310.545(a)(21), covering the nonmonograph ophthalmic active ingredients considered as part of the rulemaking for OTC ophthalmic drug products. These ingredients were listed in a summary of ingredient categories in the tentative final monograph (48 FR 29788 at 29796). The date of nonmonograph status for all of the ingredients in the list in § 310.545(a)(21), except ophthalmic anti-infective ingredients, was March 6, 1989. The date of nonmonograph status of yellow mercuric oxide and other ophthalmic anti-infective active ingredients is June 18, 1993.

Therefore, the agency is amending 21 CFR 310.545 by adding new paragraph (a)(21), by revising the introductory text of paragraph (d), and by adding new paragraphs (d)(7) and (d)(8) to establish that yellow mercuric oxide and certain other active ingredients are not generally recognized as safe and effective or are misbranded for OTC use as an ophthalmic anti-infective.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraph (a)(21), by revising the introductory text of paragraph (d), and by adding new paragraphs (d)(7) and (d)(8), to read as follows:

§ 310.545 Drug products containing certain active ingredientsoffered over-the-counter (OTC) for certain uses.

(a) * * *

(21) *Ophthalmic drug products.*

(i) *Ophthalmic anesthetic drug products.*

Antipyrine

Piperocaine hydrochloride

(ii) *Ophthalmic anti-infective drug products.*

Boric acid

Mild silver protein

Yellow mercuric oxide

(iii) *Ophthalmic astringent drug products.*

Infusion of rose petals

(iv) *Ophthalmic demulcent drug products.*

Polyethylene glycol 6000

(v) *Ophthalmic vasoconstrictor drug products.*

Phenylephrine hydrochloride (less than 0.08 percent)

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(8) of this section.

* * * * *

(7) March 6, 1989, for products subject to paragraph (a)(21) of this section, except those that contain ophthalmic anti-infective ingredients listed in paragraph (a)(21)(ii).

(8) June 18, 1993, for products subject to paragraph (a)(21)(ii) of this section that contain ophthalmic anti-infective active ingredients.

Dated: September 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–30677 Filed 12–17–92; 8:45 am]

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federal register

Friday
December 18, 1992

Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

External Analgesic Drug Products for Over-the-Counter Human Use; Diaper Rash Labeling Claims; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 78N-301D]

RIN 0905-AA06

External Analgesic Drug Products for Over-the-Counter Human Use; Diaper Rash Labeling Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any over-the-counter (OTC) external analgesic drug product for use in the treatment and/or prevention of diaper rash is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's notice of proposed rulemaking, and all new data and information on external analgesic drug products for use in the treatment and/or prevention of diaper rash that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1982 (47 FR 39412), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking and reopened the administrative record for the rulemaking for OTC external analgesic drug products, to allow for consideration of a statement on OTC drug products for the treatment of diaper rash prepared by the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients used for the treatment of diaper rash. Interested persons were invited to submit comments by December 6, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 5, 1983.

In the **Federal Register** of December 28, 1982 (47 FR 57738), in response to a request for an extension of time, the comment period and reply comment period for OTC external analgesic drug products were extended to February 4, 1983, and to March 7, 1983, respectively.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

The agency's notice of proposed rulemaking for OTC external analgesic drug products for the treatment and/or prevention of diaper rash was published in the **Federal Register** of June 20, 1990 (55 FR 25234). Interested persons were invited to file by December 17, 1990, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by December 17, 1990. New data could have been submitted until June 20, 1991 and comments on the new data until August 20, 1991. Final agency action occurs with the publication of this final rule on OTC external analgesic drug products for the treatment and/or prevention of diaper rash.

In response to the notice of proposed rulemaking for OTC external analgesic drug products for the treatment and/or prevention of diaper rash, one manufacturer submitted two comments. Neither comment discussed active ingredients or labeling claims that would be pertinent to external analgesic diaper rash drug products. Both comments were also submitted to the three other rulemakings that include OTC diaper rash ingredients: OTC topical antifungal, topical antimicrobial, and skin protectant drug products. The comments addressed skin protectant active ingredients and labeling claims and will be discussed in the final monograph for OTC skin protectant drug products for the treatment and/or prevention of diaper rash. Copies of the comments received are on public display in the Dockets Management Branch (address above).

In the notice of proposed rulemaking for OTC external analgesic drug products, published in the **Federal Register** of February 8, 1983 (48 FR 5852 at 5868 and 5869), the agency stated that drug products containing external analgesic active ingredients, which are intended for the relief of pain and/or itching or for the relief of minor aches and pains, should not be used on children under 2 years of age except as recommended by a physician. The agency discussed the possibility of cutaneous absorption due to occlusion of the skin, as from a diaper, and mentioned that analgesic drugs can be corrosive to infants' skin under occlusion (48 FR 5864). The agency added that children at the age of 2 years are just beginning to learn to communicate verbally in expressing their symptoms to a parent, whereas children below the age of 2 years (a major portion of the target population for diaper rash drug products) are more passive and less able to express and localize symptoms to a parent.

The agency reiterated these views in the notice of proposed rulemaking for OTC external analgesic drug products for the treatment and/or prevention of diaper rash and concluded that external analgesic active ingredients should not be present in OTC diaper rash drug products (55 FR 25234 at 25236 and 25237). No comments were submitted in opposition to the agency's proposal.

In the **Federal Register** of August 25, 1992 (57 FR 38568 at 38573), the agency published a notice of proposed rulemaking stating that certain ingredients in OTC drug products are not generally recognized as safe and effective or are misbranded. The ingredients listed in this proposal included any external analgesic ingredients labeled with claims or directions for use in the treatment and/or prevention of diaper rash. No comments were received on this diaper rash portion of the proposal.

Based on the above, the agency concludes that no OTC external analgesic drug product labeled for the treatment and/or prevention of diaper rash is generally recognized as safe and effective. Accordingly, the agency is declaring that OTC drug products labeled for use in the treatment and/or prevention of diaper rash should not be formulated to contain any external analgesic active ingredients.

The agency emphasizes that this final rule for OTC external analgesic drug products, as it relates to OTC diaper rash drug products, does not apply to: (1) Active ingredients included in the external analgesic final monograph, to be published in a future issue of the **Federal Register**, that are Category I antipruritics for claims other than diaper rash; and (2) active ingredients included in both the external analgesic and skin protectant rulemakings where the ingredient is a Category I skin protectant making allowable diaper rash skin protectant claims, e.g., sodium bicarbonate.

Any OTC external analgesic drug product bearing any claims or directions

for use of the product for the treatment and/or prevention of diaper rash may not continue to be initially introduced or delivered for introduction into interstate commerce unless it is the subject of an approved application or abbreviated application (hereinafter called application). The agency is amending 21 CFR part 310 by adding to subpart E, new § 310.545(a)(10)(iv) (21 CFR 310.545(a)(10)(iv)) to include any external analgesic drug products labeled for use in the treatment and/or prevention of diaper rash. Any claims or directions for using an OTC external analgesic drug product in the treatment and/or prevention of diaper rash should be eliminated from OTC drug products by June 18, 1993, regardless of whether further testing is undertaken to justify future use. Thereafter, any OTC drug product containing any external analgesic active ingredient and labeled or intended for use in the treatment and/or prevention of diaper rash will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. Therefore, on or after June 18, 1993, no OTC drug product containing any external analgesic active ingredient labeled or intended for use in the treatment and/or prevention of diaper rash may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product containing any active ingredient subject to this final rule that is repackaged or relabeled after the effective date of this final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are urged to comply voluntarily with this final rule at the earliest possible date.

The agency points out that publication of this final rule does not preclude a manufacturer's testing an external analgesic ingredient for diaper rash uses. New, relevant data can be submitted to the agency at a later date as the subject of an application that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness for these uses such data may be submitted in an appropriate citizen petition to amend the final monograph for OTC external analgesic drug products. (See 21 CFR 10.30.) However, marketing of products containing external analgesic active ingredients and bearing diaper rash claims or directions for use may not begin or continue while the data are being evaluated by the agency.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (55 FR 25234 at 25237). The agency concludes that there is no basis for the continued marketing of any OTC external analgesic drug products with claims or directions for use in the treatment and/or prevention of diaper rash. As a result of this final rule, manufacturers will need to relabel some external analgesic drug products to delete these claims and/or directions for use prior to promulgation of the final monograph for OTC external analgesic drug products and/or reformulate and relabel some OTC skin protectant drug products prior to promulgation of the final monograph for OTC skin protectant drug products for the treatment and/or prevention of diaper rash, where such products contain both an external analgesic and a skin protectant active ingredient. The final rule for OTC skin protectant drug products for the treatment and/or prevention of diaper rash will be published in a future issue of the **Federal Register**.

Early finalization of the nonmonograph status of external analgesic active ingredients having diaper rash claims will benefit both consumers and manufacturers. Consumers will benefit from the early removal from the marketplace of product claims for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Manufacturers of diaper rash drug products will benefit from being able to continue to market products containing other ingredients that have been proposed by the agency as being generally recognized as safe and effective, without manufacturers incurring additional expense of clinical testing to support these claims. (See proposed § 347.10, 48 FR 6820 at 6832 (February 15, 1983), and § 347.10, 55 FR 25204 at 25232.) In addition, external analgesic active ingredients will remain available for other claims that have been proposed by the agency as being generally recognized as safe and effective, without manufacturers incurring additional expense of clinical testing to support these claims. (See proposed § 348.50(b), 48 FR 5852 at 5868.) As noted above, some product reformulation and/or relabeling may be needed. The agency is aware of a limited number of diaper rash drug products that contain external analgesic active ingredients. Based on the above, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraph (a)(10)(iv), by revising the introductory text of paragraph (d), and by adding new paragraph (d)(9), to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(10) * * *

(iv) *Diaper rash drug products.*

Any ingredient(s) labeled with claims or directions for use in the treatment and/or prevention of diaper rash.

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(9) of this section.

* * * * *

(9) June 18, 1993, for products subject to paragraph (a)(10)(iv) of this section.

Dated: October 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-30671 Filed 12-17-92; 8:45 am]

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Friday
December 18, 1992

Part IX

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Topical Antifungal Drug Products for Over-the-Counter Human Use; Diaper Rash Labeling Claims; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N-476D]

RIN 0905-AA06

Topical Antifungal Drug Products for Over-the-Counter Human Use; Diaper Rash Labeling Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any over-the-counter (OTC) topical antifungal drug product for use in the treatment and/or prevention of diaper rash is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's notice of proposed rulemaking, and all new data and information on topical antifungal drug products for use in the treatment and/or prevention of diaper rash that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1982 (47 FR 39464), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking and reopened the administrative record for the rulemaking for OTC topical antifungal drug products, to allow for consideration of a statement on OTC drug products for the treatment of diaper rash prepared by the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients used for the treatment of diaper rash. Interested persons were invited to submit comments by December 6, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 5, 1983.

In the **Federal Register** of December 28, 1982 (47 FR 57738), in response to a request for an extension of time, the comment period and reply comment period for OTC topical antifungal drug products were extended to February 4, 1983, and to March 7, 1983, respectively.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

The agency's notice of proposed rulemaking for OTC topical antifungal drug products for the treatment and/or prevention of diaper rash was published in the **Federal Register** of June 20, 1990 (55 FR 25240). Interested persons were invited to file by December 17, 1990, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by December 17, 1990. New data could have been submitted until June 20, 1991 and comments on the new data until August 20, 1991. Final agency action occurs with the publication of this final rule on OTC topical antifungal drug products for the treatment and/or prevention of diaper rash.

In response to the notice of proposed rulemaking for OTC topical antifungal drug products for the treatment and/or prevention of diaper rash, two manufacturers and one manufacturers' association submitted comments. Only one comment discussed active ingredients or labeling claims that would be pertinent to antifungal diaper rash drug products; however, that comment was subsequently withdrawn. The other two comments were also submitted to the three other rulemakings that include OTC diaper rash ingredients: OTC external analgesic, topical antimicrobial, and skin protectant drug products. The comments addressed skin protectant active ingredients and labeling claims and will be discussed in the final monograph for OTC skin protectant drug products for the treatment and/or prevention of diaper rash. Copies of the comments received are on public display in the Dockets Management Branch (address above).

In the notice of proposed rulemaking for OTC topical antifungal drug products for the treatment and/or prevention of diaper rash, the agency stated that topical antifungal active ingredients should not be included in OTC diaper rash drug products because a fungus infection associated with diaper rash in infants and young children (the target population for these products) would not be amenable to proper diagnosis and treatment without the aid of a physician (55 FR 25240 at 25241). No comments were received in opposition to the agency's proposal.

In the **Federal Register** of August 25, 1992 (57 FR 38568 at 38574), the agency published a notice of proposed rulemaking stating that certain ingredients in OTC drug products are not generally recognized as safe and effective or are misbranded. The ingredients listed in this proposal included any topical antifungal ingredients labeled with claims or directions for use in the treatment and/or prevention of diaper rash. No comments were received on this diaper rash portion of the proposal.

Based on the above, the agency concludes that no OTC topical antifungal drug product labeled for the treatment and/or prevention of diaper rash is generally recognized as safe and effective. Accordingly, the agency is declaring that OTC drug products labeled for the treatment and/or prevention of diaper rash should not be formulated to contain any topical antifungal active ingredients.

The agency emphasizes that this final rule for topical antifungal drug products, as it relates to OTC diaper rash drug products, does not apply to active ingredients included in the topical antifungal final monograph, to be published in a future issue of the **Federal Register**, that are Category I for claims other than diaper rash.

Any OTC topical antifungal drug product bearing any claims or directions for use of the product for the treatment and/or prevention of diaper rash may not continue to be initially introduced or delivered for introduction into interstate commerce unless it is the subject of an approved application or abbreviated application (hereinafter called application). The agency is amending 21 CFR part 310 by adding to subpart E, § 310.545(a)(22) (21 CFR 310.545(a)(22)) to include any topical antifungal drug products labeled for use in the treatment and/or prevention of diaper rash. Any claims or directions for using an OTC topical antifungal drug product in the treatment and/or prevention of diaper rash should be eliminated from OTC drug products by June 18, 1993, regardless of whether further testing is undertaken to justify future use. Thereafter, any OTC drug product containing any topical antifungal active ingredient and labeled or intended for use in the treatment and/or prevention of diaper rash will be considered nonmonograph and

misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. Therefore, on or after June 18, 1993, no OTC drug product containing any topical antifungal active ingredient labeled or intended for use in the treatment and/or prevention of diaper rash may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product containing any active ingredient subject to this final rule that is repackaged or relabeled after the effective date of this final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are urged to comply voluntarily with this final rule at the earliest possible date.

The agency points out that publication of this final rule does not preclude a manufacturer's testing a topical antifungal ingredient for diaper rash uses. New, relevant data can be submitted to the agency at a later date as the subject of an application that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness for these uses such data may be submitted in an appropriate citizen petition to amend the final monograph for OTC topical antifungal drug products. (See 21 CFR 10.30.) However, marketing of products containing topical antifungal active ingredients and bearing diaper rash claims or directions for use may not begin or continue while the data are being evaluated by the agency.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (55 FR 25240 at 25244). The agency concludes that there is no basis for the continued marketing of any OTC topical antifungal drug products with claims or directions for use in the treatment and/or prevention of diaper rash. As a result of this final rule, manufacturers will need to relabel some topical antifungal drug products to delete these claims and/or directions for use prior to promulgation of the final monograph for OTC topical antifungal drug products and/or reformulate and relabel some OTC skin protectant drug products prior to promulgation of the final monograph for OTC skin protectant drug products for the treatment and/or prevention of diaper rash, where such products contain both a topical antifungal and a skin protectant active ingredient. The final rule for OTC skin protectant drug products for the treatment and/or prevention of diaper rash will be published in a future issue of the **Federal Register**.

Early finalization of the nonmonograph status of topical antifungal active ingredients having diaper rash claims will benefit both consumers and manufacturers. Consumers will benefit from the early removal from the marketplace of product claims for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Manufacturers of diaper rash drug products will benefit from being able to continue to market products containing other ingredients that have been proposed by the agency as being generally recognized as safe and effective, without manufacturers incurring additional expense of clinical testing to support these claims. (See proposed § 347.10, 48 FR 6820 at 6832, February 15, 1983; and § 347.10, 55 FR 25204 at 25232, June 20, 1990.) In addition, topical antifungal active ingredients will remain available for other claims that have been proposed by the agency as being generally recognized as safe and effective, without manufacturers incurring additional expense of clinical testing to support these claims. (See proposed § 333.210; 54 FR 51136 at 51161, December 12, 1989.) As noted above, some product reformulation and/or relabeling may be needed. The agency is aware of only a few diaper rash drug products that contain an antifungal ingredient. Based on the above, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraph (a)(22), by revising the introductory text of paragraph (d), and by adding new paragraph (d)(10), to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(22) *Topical antifungal drug products.* (i) *Diaper rash drug products.* Any ingredient(s) labeled with claims or directions for use in the treatment and/or prevention of diaper rash.

(ii) [Reserved]

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(10) of this section.

* * * * *

(10) June 18, 1993, for products subject to paragraph (a)(22)(i) of this section.

Dated: October 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–30670 Filed 12–17–92; 8:45 am]

BILLING CODE 4160–01–F

federal register

Friday
December 18, 1992

Part X

Department of Health and Human Services

Office of the Secretary

Grants to Indian Tribal Organizations for Supportive and Nutritional Services for Older Indians; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Program Announcement 13655.911]

Grants to Indian Tribal Organizations for Supportive and Nutritional Services for Older Indians

AGENCY: Administration on Aging (AoA), OS.

ACTION: Announcement of availability of funds and opportunity to apply under the Older Americans Act, Title VI, Grants for Native Americans, Part A—Indian Program.

SUMMARY: The Administration on Aging will accept applications for funding in Fiscal Year 1993 under the Older Americans Act, title VI, Grants for Native Americans, part A—Indian Program, from all current title VI, part A grantees, current grantees who wish to leave a consortium and apply as a new grantee, and eligible federally recognized Indian tribal organizations that are not now participating in title VI. Successful applications from new grantees will be funded if funds permit.

DATES: February 16, 1993.

ADDRESSES: See Appendix A.

FOR FURTHER INFORMATION CONTACT: M. Yvonne Jackson, Ph.D., Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, room 4752, 330 Independence Avenue, SW., Washington, DC 20201, telephone (202) 619–2957.

SUPPLEMENTARY INFORMATION:

1. Background and Program Purpose

The Administration on Aging (AoA) is responsible for administering title VI, part A of the Older Americans Act, which provides for grants to Indian tribal organizations representing federally recognized Tribes for the provision of nutritional and supportive services to Indian elders.

The 1978 Amendments to the Older Americans Act created title VI, Grants for Indian Tribal Organizations. The purpose of this title is to promote the delivery of supportive and nutritional services for Indian elders that are comparable to services provided under title III of the Older Americans Act. (Title III of the Older Americans Act, entitled "Grants for State and Community Programs on Aging" is the nationwide program of supportive and nutritional services which serves persons over age 60 of all ethnic groups.)

In the Older Americans Act Amendments of 1987, the name of title VI was changed to Grants for Native Americans, and part B—Native Hawaiian Programs—was added.

Nutritional services and information and referral services are required by the Act. Nutritional services include congregate meals and home-delivered meals. Supportive services include information and referral, transportion, chore services, and other supportive services which contribute to the welfare of older Native Americans.

2. Eligibility of an Indian Tribal Organization or Indian Tribe to Receive a Grant

To be eligible to receive a grant, a tribal organization or Indian tribe must meet the application requirements contained in sections 612(a) and 612(b) of the Act, which are: "(1) The tribal organization represents at least 50 individuals who are 60 years of age or older; and (2) the tribal organization demonstrates the ability to deliver supportive services, including nutritional services." For purposes of title VI, part A, the terms "Indian tribe" and "tribal organization" have the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

This announcement concerns all federally recognized Indian tribal organizations, those currently participating in title VI, part A individually or as members of a consortium and those that are not currently participating in title VI, part A.

3. Available Funds

Available funds will be awarded to tribal organizations applying under this announcement based on a formula which considers the number of eligible applicant tribal organizations, and the number of elders over age 60 in each tribal organization's proposed title VI service area. The amounts awarded include funds for both direct and indirect costs. Therefore, since funds are limited by a Tribe's annual allotment, Tribal grantees must carefully plan their programs and consider all costs. No additional funds will be available.

Applications from current grantees who are a part of a consortium and wish to leave the consortium will be treated as new grant applications. Successful new grant applications for both current grantees who are leaving a consortium and tribal organizations who are not current grantees will be funded pending availability of additional funds.

Information on grant levels in Fiscal Year 1991 is given below as a guide to possible funding levels for Tribes representing the following documented numbers of Indian elders over age 60:

Population range (number of older Indians age 60 years and over, represented by the tribal organization)	Amounts of awards in FY 1991
50 to 100	$45,682
101 to 200	53,693
201 to 300	62,115
301 to 400	70,537
401 to 500	78,959
501 +	87,381

4. Application Process

Applicants should submit applications, describing their proposed plans for nutritional and supportive services for older Indians for project period April 1, 1993–March 31, 1996, as described in section 5 below, "Content of the Application."

A three year project period was chosen in order to reduce the paperwork burden on the grantees. It is the intent of this agency to conduct on site monitoring at least once during the three year project period.

The Program Performance and Financial Status reports, due on a semi-annual basis, will be reviewed for compliance with the program regulations. Failure to submit the required reports during the project period may result in loss of future funds and possibly termination of the grant within the project period.

Ninety days prior to the end of each budget period within the three year project period grantees will be notified of the funding level for the subsequent year by the Regional Office.

One original signed by the principal official of the Tribe and two copies of the application including all attachments, must be submitted to the Administration on Aging, Grants Management Division, Margaret Tolson, Director, 330 Independence Avenue, SW., Washington, DC 20201.

5. Content of the Application

The application must meet the criteria in sections 614(a) and (b) of the Act, and title 45 of the Code of Federal Regulations, § 1326.19. The application may be presented in any format selected by the tribal organization. Contact the AoA Regional Office in your geographic area if you have questions concerning the content of the application. The application must include the following information.

A. Objectives and Need for Assistance

This section must include objectives, expressed in measurable terms, which

are related to the needs of the service population.

B. Results or Benefits Expected

The application should describe the results or benefits expected from each service proposed.

C. Approach

(1) Description and Method of Delivery of Each Service

(a) Nutrition. Nutrition services are required. There should be a description of the methods, facilities, and staff to be used in preparing, serving, and delivering meals, and the estimated number of persons to be served. The nutrition services provided, either directly or by way of a grant or contract, must be substantially in compliance with the provisions of part C, title III, which include:

1. Provide at least one hot or other appropriate meal a day, 5 or more days a week in a congregate setting, and any additional meals which the recipient of a grant may elect to provide, each of which assures a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Academy of Sciences—National Research Council.

2. Provide at least one home delivered hot, cold, frozen, dried, canned, or supplemental food (with a satisfactory storage life) meal per day, 5 or more days a week, and any additional meals which the recipient of a grant may elect to provide, each of which assures a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Academy of Sciences—National Research Council.

If no title VI, part A funds are to be used for nutrition services, the application must state how such services are provided in other ways, and how they are financed.

(b) Information and Referral. Information and referral services are required. They must be available for older Indians living in the title VI part A service area and there should be a description of what information and referral services will be provided and how they will be provided. The estimated number of individuals to be served should be stated. If no title VI, part A funds are to be used for information and referral services, the application must state how such services are provided in other ways, and how they are financed.

(c) Other Supportive Services. The application must describe any other supportive services to be provided wholly or partly by title VI, part A funds. The description should include what supportive services will be provided and how they will be provided. The approximate number of persons to be served by each service should be stated.

Legal assistance and ombudsman services may be provided, but are not required. However, if provided, they should be reported as "Supportive Services."

If a tribal organization elects to provide legal services, it must substantially comply with the requirements in title 45 of the Code of Federal Regulations § 1321.71, and all legal assistance providers must comply fully with the requirements in § 1321.71(d) through § 1321.71(k).

Transportation of persons to nutrition sites or other places is to be considered as a "Supportive Service."

(d) Coordination with title III. The application should provide a description of how title VI and title III resources are to be coordinated within the title VI service area, including information and referral services.

(2) Evaluation Criteria

The application must discuss the criteria to be used to evaluate the results and successes of the program, based on the objective indicated in Item A above. It will also explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in Item B above are being achieved.

D. Geographic Location

The application must include both a narrative description of the title VI, part A service area, and a map with the service area identified. The area to be served by title VI, part A must have clear geographic boundaries. There is no prohibition, however, on its overlapping with areas served by title III.

E. Additional Information

(1) Older Indians in the Title VI, Part A Service Area

The law requires that a tribal organization must represent at least 50 persons aged 60 years or over in order to be eligible for title VI funding. Therefore, the number of persons aged 60 or over living in the proposed title VI service area must be stated in the application. The tribal organization may develop its own population statistics, with certification from the Bureau of Indian Affairs, in order to establish eligibility. The amount of the grant is based on this number of persons aged 60 years or over.

As a separate matter, the regulations allow a Tribe to define, based on its own criteria, who the Tribe will consider to be an "older Indian" for purposes of eligibility to receive title VI services. If a Tribe selects a different definition of "older Indian" for service delivery, the application must state the age selected, and the number of Indians under age 60 eligible to be served. If more than one Tribe is included in the application, this information must be stated separately for each Tribe. All Tribes in a consortium must use the same age for "older Indian."

(2) Resolution

The tribal organization representing a federally recognized Tribe must submit a copy of the Tribal council resolution authorizing participation in title VI, part A. If the tribal organization represents a consortium of more than one Tribe, a resolution is required from each participating Tribe, specifically authorizing representation by the trial organization for the purpose of title VI, part A of the Older Americans Act.

(3) Program Assurances

Title VI, part A Program Assurances must be included in the application. The title VI, part A Program Assurances are those provisions identified in section 614(a) of the Older Americans Act, and in title 45 of the Code of Federal Regulations § 1326.19(d), issued August 31, 1988 (see Appendix B). The tribal organization must state that it agrees to abide by all the provisions for the entire project period being applied for April 1, 1993–March 31, 1996.

Copies of the title III and title VI current law and regulations, and of part 92, may be obtained from the Regional Program Director for the Administration on Aging. (See appendix A)

(4) Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (c) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

(5) Identifying Information

Applications must identify both the principal official of the tribal organization, and the proposed title VI program director: Name, Title, Address including Zip Code, Telephone number, and, if available, the FAX Number. The tribal organization's EIN (Employer Identification Number) must also be included.

If the applicant tribal organization is a consortium, the applicant must list the federally recognized tribes which are included. A copy of each tribal resolution must be enclosed.

6. Closi0g Date for Application

To be eligible for consideration, applications must be received or postmarked on or before February 18, 1993. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark, or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

7. Action on Applications

Awards will be made by the Commissioner on Aging. Funding decisions will be announced as soon as possible.

Catalog of Federal Domestic Assistance Program #93.655 Grants to Indian Tribes and Native Hawaiians. This Program Announcement is not subject to E.O. 12372.

Dated: December 11, 1992.

Joyce T. Berry,

U.S. Commissioner on Aging.

Appendix A

Regional Offices

Region 1 (CT, MA, ME, NH, RI, VT)
Thomas Hooker, RPD, John F. Kennedy Building, room 2075, Boston, Massachusetts 02203, (617) 565–1158, FAX (617) 565–1111

Region II (NY, NJ, PR, VI)
Judith Rackmill, RPD, 26 Federal Plaza, room 38–102, New York, New York 10278, (212) 264–2976, FAX (212) 264–0114

Region III (DC, MD, VA, DE, PA, WV)
Paul E. Ertel, Jr., RPD, 3535 Market Street, P.O. Box 13716-Stop 23, Philadelphia, Pennsylvania 19101, (215) 596–6891, FAX (215) 596–0614

Region IV (AL, FL, MS, SC, TN, NC, KY, GA)
Frank Nicholson, RPD, 101 Marietta Tower, suite 903, Atlanta, Georgia 30323, (404) 331–5900, FAX (404) 331–2017

Region V (IL, IN, MI, MN, OH, WI)
Eli Lipschultz, RPD, 105 West Adams Street, 20th Floor, Chicago, Illinois 60603, (312) 353–3141, FAX (312) 886–8533

Region VI (AR, LA, OK, NM, TX)
John Diaz, RPD, 1200 Main Tower Building, room 1000, Dallas, Texas 75202, (214) 767–2971, FAX (214) 767–2951

Region VII (IA, KS, MO, NE)
Larry Brewster, RPD, 601 East 12th Street, room 384, Kansas City, Missouri 64106, (816) 426–2955, FAX (816) 426–2959

Region VIII (CO, MT, UT, WY, ND, SD)
Percy Devine, RPD, 1961 Stout Street, room 325, Federal Office Building, Denver, Colorado 80294, (303) 844–2951, FAX (303) 844–2943

Region IX (CA, NV, AZ, HI, GU, TTPI, CNMI, AS)
Alicia Valadez Ors, RPD, 50 United Nations Plaza, room 480, San Francisco, California 94102, (415) 556–6003, FAX (415) 556–7393

Region X (AK, ID, OR, WA)
Chisato Kawabori, RPD, Blanchard Plaza, RX–33; room 1200, 2201 Sixth Avenue, Seattle, Washington 98121, (206) 553–5341, FAX (206) 553–6790

Appendix B

Older Americans Act—Section 614(a)—No grant may be made under this part unless the eligible tribal organization submits an application to the Commissioner which meets such criteria as the Commissioner may by regulation prescribe. Each such application shall—

(1) Provide that the eligible tribal organization will evaluate the need for supportive and nutrition services among older Indians to be represented by the tribal organizations;

(2) Provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) Provide that the tribal organization will make such reports in such form and containing such information, as the Commissioner may reasonably require, and comply with such requirements as the Commissioner may impose to assure the correctness of such reports;

(4) Provide for periodic evaluation of activities and projects carried out under the application;

(5) Establish objectives consistent with the purposes of this part toward which activities under the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the tribal organization proposes to overcome such obstacles;

(6) Provide for establishing and maintaining information and referral services to assure that older Indians to be served by the assistance made available under this part will have reasonably convenient access to such services;

(7) Provide a preference for Indians aged 60 and older for full or part-time staff positions whenever feasible;

(8) Provide assistance that either directly or by way of grant or contact with appropriate entities nutrition services will be delivered to older Indians represented by the tribal organization substantially in compliance with the provisions of part C of title III, except that in any case in which the need for nutritional services for older Indians represented by the tribal organization is already met from other sources, the tribal organization may use the funds otherwise required to be expended under this clause for supportive services;

(9) Contain assurance that the provision of sections 307(a)(14)(A) (i) and (iii), 307(a)(14)(B), and 307(a)(14)(C) will be complied with whenever the application contains provisions for the acquisition, alteration, or renovation of facilities to serve as multipurpose senior centers;

(10) Provide that any legal or ombudsman services made available to older Indians represented by the tribal organization will be substantially in compliance with the provisions of title III relating to the furnishing of similar services; and

(11) Provide satisfactory assurance that fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the tribal organization, including any funds paid by the tribal organization to a recipient of a grant or contract.

45 CFR 1326.19. The application shall provide for:

(d) Assurances as prescribed by the Commissioner that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) A tribal organization shall comply with all requirements set forth in § 1326.7 through § 1326.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act.

BILLING CODE 4130-01-M

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICE
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 US^C 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any

judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll' or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited n the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs, and,(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation or a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, of every grant officer or other designee on whose grant activity the convicted employee was working unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect

to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or,

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (Use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check___if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human services, the, central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Signature_____Date_____

Title_____

Organization_____

DGMO Form #2 Revised May 1990

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department of agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services" (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and

in all solicitations for lower tier covered actions.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSIONS - LOWER TIER COVERED TRANSACTIONS (To Be Supplied to lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions - Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Signature _____ Date _____
Title _____
Organization _____

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Organization

_____

Authorized Signature Title Date

Note: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001.

[FR Doc. 92-30694 Filed 12-17-92; 8:45 am]
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federal register

Friday
December 18, 1992

Part XI

Environmental Protection Agency

40 CFR Part 122

National Pollutant Discharge Elimination System; Storm Water Discharges; Permit Issuance and Permit Compliance Deadlines for Phase I Discharges; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[FRL-4546-8]

National Pollutant Discharge Elimination System; Storm Water Discharges; Permit Issuance and Permit Compliance Deadlines for Phase I Storm Water Discharges

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final rule which specifies deadlines for the issuance of NPDES permits for storm water discharges associated with industrial activity and discharges from municipal separate storm sewer systems serving a population of 100,000 or more, and deadlines by which dischargers shall comply with the terms of their permits. EPA is taking this action in compliance with the mandate of the court in *Natural Resources Defense Council* v. *EPA*, 966 F.2d 1292 (9th Cir. 1992). This action also clarifies that application requirements and deadlines for certain discharges which EPA had previously exempted from the scope of the NPDES storm water regulations are reserved pending further rulemaking. These include discharges from construction sites disturbing less than 5 acres of land and discharges exempt under 40 CFR 122.26(b)(14)(xi) because of a lack of exposure of industrial activity to storm water. This action is also taken in response to the Ninth Circuit decision.

EFFECTIVE DATE: This rule is effective on December 18, 1992. Pursuant to 40 CFR 23.2, EPA is also declaring this rule to be final for purposes of judicial review on the same date.

ADDRESSES: The public record for today's rule may be found at EPA Headquarters, NPDES Permits Division, NE 220, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Appointments to review the record may be made by calling Nancy Cunningham at (202) 260-9535. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: The EPA Storm Water Hotline at (703) 821-4823.

SUPPLEMENTARY INFORMATION:

I. Authority
II. Background
A. Water Quality Act of 1987
B. November 16, 1990 Rules
C. Later Deadline Extensions
D. Ninth Circuit Decision in *NRDC* v. *EPA*
III. Summary of Today's Rule
A. Deadlines for Phase I Permit Issuance and Compliance
B. Requirements for "Light Industries" and "Small Construction Sites"
IV. Regulatory Requirements
A. Executive Order 12291
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
V. Administrative Procedure Act Requirements

I. Authority

Today's rule is promulgated under the authority of sections 301, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1318, 1342, 1361.

II. Background

A. Water Quality Act of 1987

The Water Quality Act (WQA) of 1987 added section 402(p) to the Clean Water Act (CWA) to establish a comprehensive two phased approach for EPA to address storm water discharges. Section 402(p)(1) provides that EPA or States cannot require a permit under the National Pollutant Discharge Elimination System (NPDES) for certain storm water discharges until October 1, 1994,[1] except for storm water discharges listed under section 402(p)(2). Section 402(p)(2) lists five types of storm water discharges which are covered under "Phase I" of the program and are required to apply for a permit prior to October 1, 1994:

(A) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(B) A discharge associated with industrial activity;

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000; or

(E) A discharge for which the Administrator or the State, as the case may be, determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

The WQA clarified and amended the requirements for permits for storm water discharges in the new CWA section 402(p)(3). The Act clarified that permits for discharges associated with industrial activity must meet all of the applicable provisions of section 402 and section 301 including all applicable technology-based requirements such as the Best Available Technology Economically Achievable (BAT) (see section 304(b)(2)) or the Best Conventional Technology (BCT) (see section 304(b)(4)). Permits for discharges from municipal separate storm sewer systems must meet a new statutory standard requiring controls to reduce the discharge of pollutants to the maximum extent practicable (MEP). As with all point source discharges under the CWA, storm water discharges are subject to applicable water quality-based standards.

Section 402(p)(4) established deadlines to implement the permit program for: Storm water discharges associated with industrial activity; discharges from large municipal separate storm sewer systems (systems serving a population of 250,000 or more); and discharges from medium municipal separate storm sewer systems (systems serving a population of 100,000 or more but less than 250,000). Congress instructed EPA to issue regulations specifying NPDES permit application requirements by February 4, 1989. Congress also required that permit applications for such discharges were to be submitted no later than February 4, 1990 for industrial and large municipal systems, and no later than February 4, 1992 for medium municipal systems. EPA or the State is to issue or deny all permits one year after each of these respective deadlines, and facilities must comply with all permit conditions within three years of permit issuance.

All other storm water discharges fall under Phase II of the program (see section 402(p)(1)), and neither EPA nor a State may require an NPDES permit for such sources until October 1, 1994, unless a permit for the discharge was issued prior to the date of enactment of the WQA (i.e., February 4, 1987), or the discharge is determined to be a significant contributor of pollutants to waters of the United States or is contributing to a violation of water quality standards.

B. November 16, 1990 Rules

EPA promulgated permit application regulations for the storm water discharges identified under section 402(p)(2) (B), (C), and (D) of the CWA, including storm water discharges associated with industrial activity, on November 16, 1990 (55 FR 47990). The regulations defined which discharges are "associated with industrial activity" and thus are subject to permitting under Phase I. EPA included facilities in ten different major industrial categories (40 CFR 122.26(b)(14)(i)-(x)). One of the

[1] As originally adopted, section 402(p)(1) specified that the "moratorium" on permitting of these storm water sources, which EPA refers to as "Phase II" sources, would expire on October 1, 1992. Section 312 of the Water Resource Development Act of 1992, which was signed by the President on October 31, 1992, extended the moratorium to October 1, 1994.

categories included discharges from construction sites larger than 5 acres (40 CFR 122.26(b)(14)(x)). Under the regulations, facilities in these categories were presumed to discharge storm water associated with industrial activity and were required to submit permit applications. EPA also established an eleventh category of industrial facilities in "light" industries (40 CFR 122.26(b)(14)(xi)). For these discharges, by contrast, EPA presumed that there would be no storm water discharge associated with industrial activity, and did not require permit applications unless there was actual exposure of industrial pollutants to storm water at the facility.

The November 16, 1990 regulations also addressed requirements, including deadlines, for two sets of application procedures for those storm water discharges which EPA classified as associated with industrial activity: Individual permit applications and group applications. In addition, the notice recognized a third set of application procedures for storm water discharges associated with industrial activity: those associated with general permits. (EPA has since issued a series of general permits which cover most discharges associated with industrial activities, including construction, in States, at Federal facilities, and on Indian lands, where EPA is the NPDES permitting authority. 57 FR 41176, 57 FR 41236 (Sept. 9, 1992); 57 FR 44412, 57 FR 44438 (Sept. 25, 1992).

The requirements for individual applications for storm water discharges associated with industrial activity are set forth at 40 CFR 122.26(c)(1). Generally, the applicant must provide comprehensive facility specific narrative information and quantitative analytical data based on samples collected on site during storm events. Under § 122.26(e)(1) of the November 16, 1990 rule, individual applications were to have been submitted by November 18, 1991.

The group application process allows for facilities with similar operations and storm water discharges to join together and file a single two part permit application. Part 1 of a group application identifies the facilities within the group and includes qualitative information describing the facilities. Part 1 of the group application was to be submitted to EPA no later than March 18, 1991. The regulation provides that EPA has a 60 day period after receipt to review the Part 1 applications and notify the groups as to whether they have been approved or denied as a properly constituted "group" for purposes of this alternative application process. Part 2 of the group application contains detailed information, including sampling data, on roughly ten percent of the facilities in the group. Under the November 16, 1990 regulations, Part 2 applications were to be submitted no later than 12 months after the date of approval of the Part 1 application.

The November 16, 1990 regulations also established a two part application process for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. The regulations list 220 cities and counties that are defined as having municipal separate storm sewer systems serving a population of 100,000 or more and allow for case-by-case designations of other municipal separate storm sewers to be part of these systems (55 FR 48073, 48074). The regulations provide that Part 1 applications for discharges from large municipal separate storm sewer systems (systems serving a population of 250,000 or more) were due November 18, 1991. Part 2 applications for discharges from large systems were due on November 16, 1992. Part 1 applications for discharges from medium municipal separate storm sewer systems (systems serving a population of 100,000 or more, but less than 250,000) were due on May 18, 1992. Part 2 applications for discharges from medium systems are due on May 17, 1993.

C. Later Deadline Extensions

In light of substantial concerns raised by the regulated community regarding the complexity of the new storm water regulations, the difficulty in determining whether particular facilities were subject to the new rules, and administrative problems in developing group applications, EPA granted a series of extensions to the permit application deadlines for discharges associated with industrial activity. Initially, the deadline for submitting Part 1 of the group application was extended from March 18, 1991 to September 30, 1991 (56 FR 12098 (March 21, 1991)). Later, EPA also extended the deadline for submitting an individual permit application for storm water discharges associated with industrial activity from November 18, 1991 to October 1, 1992 (56 FR 56548, (November 5, 1991)). EPA also extended the deadline for a facility that is rejected as a member of a group application to submit an individual permit application no later than 12 months after the date of receipt of the notice of rejection or October 1, 1992, whichever comes first. (56 FR 56549, (November 5, 1991)). Finally, EPA extended the deadline for Part 2 of group applications for storm water discharges associated with industrial activity to October 1, 1992 (57 FR 11524, (April 2, 1992)). With these extensions, October 1, 1992 was established as the single outside date for any discharge associated with industrial activity to submit either an individual or group application, or to be covered by a promulgated general permit.

Congress has also acted to grant certain extensions to the application deadlines for discharges associated with industrial activity. In March, 1991, Congress adopted section 307 of the Dire Emergency Supplemental Appropriations * * * Act of 1991, which effectively ratified the extension of the Part 1 group application deadline. In December 1991, the President signed the Intermodal Surface Transportation Efficiency Act (or Transportation Act) of 1991 into law. Section 1068 of the Transportation Act addresses NPDES permit application deadlines for storm water discharges associated with industrial activity from facilities that are owned or operated by municipalities. EPA has since codified portions of section 1068 into its rules (57 FR 11524 (Apr. 2, 1992)).

D. Ninth Circuit Decision in NRDC v. EPA

On June 4, 1992, the United States Court of Appeals for the Ninth Circuit issued an opinion granting in part a petition for review of EPA's 1990 storm water regulation implementing Section 402(p) of the Clean Water Act ("CWA"). *Natural Resources Defense Council* v. *EPA*, 966 F.2d 1292 (9th Cir. 1992). The Court upheld several provisions of the regulations, including the definition of "municipal separate storm sewer system," the standards for municipal storm water controls, the scope of the permit exemption for oil and gas operations, and EPA's decision not to provide public comment on Part 1 group industrial permit applications.

The Court did, however, strike down the exemptions from the definition of storm water discharges "associated with industrial activity" for construction sites smaller than 5 acres and for "light" industries and remanded both for further proceedings. With respect to the light industry category, the Court noted that the statutory term "associated with industrial activity" was very broad and concluded that Congress intended only to exempt discharges from non-industrial parts of facilities such as parking lots. The Court rejected EPA's argument that industrial pollutant levels in storm water would be minimal at light industrial facilities, finding nothing in the record to support that

conclusion. The Court thus found the exemption to be arbitrary and capricious. 966 F.2d at 1304–05. As for construction sites, the Court noted that EPA had proposed to exempt only sites smaller than 1 acre. In the final rule, the exemption was increased to 5 acres, based on the Agency's determination that smaller sites would not have levels of activity that were like other industrial activities. The Court ruled, however, that there was nothing in the record "that construction sites on less than five acres are non-industrial in nature." 966 F.2d at 1306. The Court rejected EPA's argument that the 5 acre cutoff constituted a *de minimis* exemption, finding the record lacked information to suggest whether smaller discharges would be *de minimis. Id.*

The Court also declared EPA's extension of the statutory deadlines for storm water permit applications to be unlawful, but declined to strike down the deadlines as NRDC had requested. The Court did, however, order EPA to promulgate additional rules specifying dates for permit approval or denial and for permit compliance, as contemplated by the statute. The Court also stated its expectation that EPA would abide by the Court's holding that EPA has no authority to grant further extensions to the statutory deadlines for permit applications. 966 F.2d at 1300.

III. Summary of Today's Rule

A. Deadlines for Phase I Permit Issuance and Compliance

In response to the mandate of the Ninth Circuit, EPA is today issuing rules to specify dates by which Phase I storm water permits are to be issued or denied by EPA or authorized States and to specify the dates by which the discharger shall comply with the permit. Section 402(p)(4) provided that EPA/States were to issue or deny permits by February 4, 1991 for discharges associated with industrial activity or discharges from large municipal separate storm sewer systems, and by February 4, 1993 for discharges from medium municipal separate storm sewer systems. These dates represent one year after the statutory permit application deadline and two years after the deadline for promulgation of permit application regulations. However, as discussed above, EPA was unable to promulgate its regulations by the statutory deadline, and therefore established permit application deadlines which are somewhat later than those specified in the statute. EPA believes that the Court did not expect EPA or authorized States to issue or deny permits prior to receipt of complete permit applications. Therefore, today's rule specifies that permits are to be issued or denied by one year after the regulatory deadline for submitting complete permit applications, i.e., October 1, 1993 for most discharges associated with industrial activity, May 17, 1994 for discharges associated with industrial activity from municipalities with a population less than 250,000 who participated in a group application, November 18, 1993 for discharges from large municipal systems, and May 17, 1994 for discharges from medium municipal systems. For applications for new discharges, existing discharges at facilities which fail to submit a complete permit application by the deadline, EPA or the State shall issue or deny the permit within one year after the actual receipt of the permit application.[2] This one year time frame is consistent with the intent of Congress reflected in section 402(p)(4) that permits be issued or denied one year after the permit application deadline.

Section 402(p)(4) also specifies that permits for Phase I sources shall provide for compliance as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit. Pursuant to the Court's mandate, today's rule codifies this provision in the regulations at 40 CFR 122.42(d) for subsequent inclusion in all initial storm water permits for Phase I sources.

EPA recognizes that the decision of the Ninth Circuit in *Natural Resources Defense Council* v. *EPA*, 966 F.2d 1292, 1299–1300 (9th Cir. 1992) holds the following with respect to EPA's authority to give any further extensions to the permit application deadlines for these storm water discharges: "EPA does not have the authority to ignore unambiguous deadlines set by Congress * * *. EPA does not have the authority to predicate future rules or deadlines in disagreement with this opinion. We presume that the EPA will duly perform its statutory duties. (citations omitted)". EPA will fully comply with the mandate of the Court with respect to permit application deadlines for Phase I storm water discharges, as currently defined.

B. Requirements for "Light Industries" and "Small" Construction Sites

In its opinion, the Ninth Circuit invalidated EPA's exemptions for construction sites less than five acres and for light industry categories where there is no exposure of industrial activity to storm water, and remanded them to the Agency for further proceedings. Members of the regulated community have raised questions regarding whether the Court's action effectively rewrites the regulations, making small construction sites and light industries with no exposure of industrial activity to storm water subject to the current application requirements for discharges associated with industrial activity.

EPA does not believe that the Court's opinion had the effect of automatically subjecting small construction sites and light industries to the existing application requirements and deadlines for storm water discharges associated with industrial activity. The Court's opinion is quite clear that the two exemptions were remanded to EPA for further rulemaking proceedings. 966 F.2d at 1304, 1305, 1310. Thus, EPA believes that the agency must undergo further notice and comment rulemaking to clarify the status of these facilities under the storm water program. Therefore, EPA believes that a specific change to the current definition of "storm water discharge associated with industrial activity" in response to the Court's opinion is unnecessary, and could in fact be confusing to the regulated community. Instead, requirements for discharges from small construction sites and light industries with no exposure are reserved pending the further rulemaking. Such facilities need not submit permit applications until the EPA conducts further rulemaking. If EPA decides to propose that some or all of these discharges are "associated with industrial activity," EPA will propose new application deadlines consistent with the intent of Section 402(p)(4) and the opinion of the Ninth Circuit.

EPA notes that the Court's key concern was that EPA lacked any adequate factual basis in the rulemaking record to distinguish small construction sites from larger construction sites, and to distinguish the discharges from "light" industry facilities without exposure from discharges from facilities in heavy industries or light industries with exposure. EPA solicits comments and any specific factual information to assist it in developing a new proposal to address the light industry and small construction site categories.

IV. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must determine whether this regulation constitutes a "major rule", requiring a regulatory impact analysis. This rule

[2] All of the relevant storm water permit application and permit issuance deadlines are listed in Appendix A at the end of this notice.

imposes no new regulatory requirements; the requirement to submit an NPDES permit application was contained in the November 16, 1990 rule. This rule merely codifies existing statutory deadlines for NPDES storm water permit issuance and compliance. Thus, the rule meets none of the criteria of a "major rule" under E.O. 12291. This rule has been submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act

The requirements of this rule impose no new information collection requirements; the information collection requirements associated with the NPDES storm water permit program already have been assigned OMB control number 2040–0086. Thus, an Information Collection Request for this rule is unnecessary and was not prepared.

C. Regulatory Flexibility Act

This rule imposes no new regulatory requirements, but rather codifies existing statutory deadlines for NPDES storm water permit issuance and compliance. Thus, I certify that this rule will not have a significant impact on a substantial number of small entities.

V. Administrative Procedure Act Requirements

Today's rule is being issued without prior notice and comment. The deadlines for storm water permit issuance and compliance constitute interpretive rules for which notice and comment are not required. 5 U.S.C. 553(b)(A). Alternatively, there is good cause for issuing today's rule without notice and comment, because prior notice is unnecessary. 5 U.S.C. 553(b)(B). Today's rule makes no substantive change to the statutory requirements and deadlines for storm water permit issuance and compliance, but merely codifies the deadline scheme specified in the statute. For these same reasons, there is good cause to make today's rule immediately effective.

List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Water pollution control.

Dated: December 11, 1992.

William K. Reilly,

Administrator.

APPENDIX A TO THE PREAMBLE—NPDES STORM WATER PERMIT APPLICATION AND ISSUANCE DEADLINES

Type of application/type of discharge	Permit application deadline		Permit issuance deadline
Industrial			
• Individual:			
Existing facilities	October 1, 1992		October 1, 1993.
Facilities rejected from a group application	October 1, 1992		October 1, 1993.
New facilities	180 days prior to commencement of industrial activity which may cause a storm water discharge.		One year after receipt of complete permit application.
New construction facilities	90 days prior to commencement of construction		One year after receipt of complete permit application.
• Group:	Part 1	Part 2	
All industrial activities except those owned or operated by a municipality with a population of less than 250,000.	September 30, 1991	October 1, 1992	October 1, 1993.
Industrial activities owned or operated by a municipality with a population of less than 250,000.	May 18, 1992	May 17, 1993	May 17, 1994.
Municipal	Part 1	Part 2	
• Large Municipal Systems	November 18, 1991	November 16, 1992	November 16, 1993.
• Medium Municipal Systems	May 18, 1992	May 17, 1993	May 17, 1994.

For all initial storm water permits, the permittee must comply with all permit conditions no later than 3 years after the date of permit issuance.

For the reasons set forth in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.26 is amended by adding paragraph (e)(7) to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

* * * * *

(e) * * *

(7) The Director shall issue or deny permits for discharges composed entirely of storm water under this section in accordance with the following schedule:

(i)(A) Except as provided in paragraph (e)(7)(i)(B) of this section, the Director shall issue or deny permits for storm water discharges associated with industrial activity no later than October 1, 1993, or, for new sources or existing sources which fail to submit a complete permit application by October 1, 1992, one year after receipt of a complete permit application;

(B) For any municipality with a population of less than 250,000 which submits a timely Part I group application under paragraph (e)(2)(i)(B) of this section, the Director shall issue or deny permits for storm water discharges associated with industrial activity no later than May 17, 1994, or, for any such municipality which fails to submit a complete Part II group permit application by May 17, 1993, one year after receipt of a complete permit application;

(ii) The Director shall issue or deny permits for large municipal separate storm sewer systems no later than November 16, 1993, or, for new sources or existing sources which fail to submit a complete permit application by November 16, 1992, one year after

receipt of a complete permit application;

(iii) The Director shall issue or deny permits for medium municipal separate storm sewer systems no later than May 17, 1994, or, for new sources or existing sources which fail to submit a complete permit application by May 17, 1993, one year after receipt of a complete permit application.

* * * * *

3. Section 122.42 is amended by adding paragraph (d) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(d) *Storm water discharges.* The initial permits for discharges composed entirely of storm water issued pursuant to § 122.26(e)(7) of this part shall require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.

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